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TOY SAFETY ACT

HEARINGS

BEFORE THE

SUBCOMMITTEE ON THE CONSUMER

OF THE

COMMITTEE ON COMMERCE,
SCIENCE, AND TRANSPORTATION
UNITED STATES SENATE

NINETY-EIGHTH CONGRESS

SECOND SESSION

ON

S. 2650

TO ENABLE THE CONSUMER PRODUCT SAFETY COMMISSION TO PROTECT THE PUBLIC BY ORDERING NOTICE AND REPAIR, REPLACEMENT OR REFUND OF CERTAIN TOYS OR ARTICLES INTENDED FOR USE BY CHILDREN IF SUCH TOYS OR ARTICLES CREATE A SUBSTANTIAL RISK OF INJURY TO CHILDREN

JUNE 8 AND JULY 2, 1984

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TOY SAFETY ACT

FRIDAY, JUNE 8, 1984

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
SUBCOMMITTEE ON THE CONSUMER,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:07 a.m., in room 253, Russell Senate Office Building, Hon. Bob Kasten (chairman of the subcommittee) presiding.

Staff members assigned to these hearings: Marilyn Richmond, staff counsel, and Loretta Dunn, minority staff counsel.

OPENING STATEMENT BY SENATOR KASTEN

Senator KASTEN. The committee will come to order. Today the subcommittee will consider legislation to expedite the recall of unsafe toys and other articles intended for use by children.

Under current law the Consumer Product Safety Commission may order the recall of these products only after engaging in long and cumbersome procedures, and this in some cases can take years to complete. Because of a legislative quirk, it is often easier for the Consumer Product Safety Commission to recall products intended for adults that present substantial risks of injury than it is for the agency to recall hazardous toys and children's articles.

It does not seem to make much sense, but the fact is that it is easier to recall a defective toaster or a defective iron or a defective hair dryer than it would be to recall a defective toy, a hazardous toy, a toy that could injure or even kill a young child.

There is absolutely no reason that it should take longer to recall toys and children's articles than it does to recall other consumer products. In fact, these are the products that ought to be removed first from the marketplace, since children are particularly vulnerable and often unable to protect themselves.

Toys and children's articles that represent a substantial risk of injury should be removed from the market as quickly as possible. S. 2650, the Toy Safety Act, will amend the Federal Hazardous Substances Act, which by historical accident governs the procedures for the recall of toys and child-related articles.

The bill will enable the Consumer Product Safety Commission to order the immediate recall of toys and children's articles that create a substantial risk of injury to children. The Consumer Product Safety Commission will no longer be required to issue a final rule banning a hazardous toy or article before it may begin the overall recall proceeding. Nor will the CPSC be required to complete a rulemaking to transfer its regulatory functions from one act to another.

These procedures are lengthy, these procedures are cumbersome, these procedures only serve to unnecessarily delay removal of unsafe toys and other children's articles from the market.

With this act, the consumer's interest will be better served and the child's environment better protected.

I would like to welcome today our entire group of witnesses. Today we are going to be hearing from, first of all, the U.S. Office of Consumer Affairs, representing the administration. We are going to be hearing from the Consumer Product Safety Commission, an independent agency. We are going to be hearing from the American Academy of Pediatrics. We are going to be hearing from the Toy Manufacturers of America, from the Consumer Federation of America, and from Consumers Union.

We are particularly pleased to have with us today a representative of the Mattel Co., who will describe the company's latest toy product innovation, an x ray visible additive for the plastics used to make children's toys. And I ought to say, we are particularly pleased that the representatives of the Mattel Co. have come all the way across the country in order to participate today in this hearing.

Senator Hollings has an opening statement which will be placed in the record.

[The statement and bill follow:]

OPENING STATEMENT BY SENATOR HOLLINGS

I am pleased that hearings on S. 2650 have been scheduled so promptly. The welfare of children has always been a major concern of mine. I was one of the principal sponsors of the WIC program—the women, infants, and children's program which provides financing for food purchases by pregnant and nursing women. This program helps to ensure that the nutritional needs of babies of low-income women are met.

S. 2650 is another important step in protecting the health and safety of children. The bill will make it easier for the Consumer Product Safety Commission to recall toys which pose a danger to children. Toys and other children's products that pose a substantial risk of injury should be taken off the market as soon as possible. I understand that this bill has the support of the Consumer Product Safety Commission, the Administration, and the American Academy of Pediatrics. It is my hope that this bill will be acted upon by the Committee and the Senate expeditiously.

[S. 2650, 98th Cong., 2d Sess.]

A bill to enable the Consumer Product Safety Commission to protect the public by ordering notice and repair, replacement or refund of certain toys or articles intended for use by children if such toys or articles create a substantial risk of injury to children

Be it enacted by the Senate and House of representatives of the United States of America in Congress assembled, That this Act may be cited as the "Toy Safety Act of 1984".

SEC. 2. Section 15 of the Federal Hazardous Substances Act (15 U.S.C. 1274) is amended—

(1) by redesignating subsections (c), (d), and (e) as subsections (d), (e), and (f), respectively; and

(2) by inserting immediately after subsection (b) the following:

"(c)(1) If any toy or other article intended for use by children that is not a banned hazardous substance creates a substantial risk of injury to children (because of the pattern of risk, the number of toys or such articles presenting a risk, the severity of the risk, or otherwise) and the Commission determines (after affording interested persons, including consumers and consumer organizations, an opportunity for a hearing) that notification is required to adequately protect the public from such toy or article, the Commission may order the manufacturer or any distributor or dealer of the toy or article to take any one or more of the following actions:

"(A) To give public notice that the toy or article creates a substantial risk of injury to children.

"(B) To mail such notice to each person who is a manufacturer, distributor, or dealer of such toy or article.

"(C) To mail such notice to every person to whom the person giving notice knows such toy or article was delivered or sold.

An order under this paragraph shall specify the form and content of any notice required to be given under the order.

"(2) If any toy or other article intended for use by children that is not a banned hazardous substance creates a substantial risk of injury to children (because of the pattern of risk, the number of toys or such articles presenting a risk, the severity of the risk, or otherwise) and the Commission determines (after affording interested persons, including consumers and consumer organizations, an opportunity for a hearing) that action under this paragraph is in the public interest, the Commission may order the manufacturer, distributor, or dealer to take whichever of the following actions the person to whom the order is directed elects:

"(A) If repairs to or changes in the toy or article can be made so that it will not create a substantial risk of injury to children, to make such repairs or changes.

"(B) To replace such toy or article with a like or equivalent toy or article which does not create a substantial risk of injury to children.

"(C) To refund the purchase price of the toy or article (less a reasonable allowance for use, if the toy or article has been in the possession of the consumer for one year or more—

"(i) at the time of public notice under paragraph (1)(A), or

"(ii) at the time the consumer receives actual notice that the toy or article creates a substantial risk of injury to children, whichever first occurs).

An order under this paragraph may also require the person to whom it applies to submit a plan, satisfactory to the Commission, for taking the action which such person has elected to take. The Commission shall specify in the order the person to whom refunds must be made if the person to whom the order is directed elects to take the action described in subparagraph (C). If an order under this paragraph is directed to more than one person, the Commission shall specify which person has the election under this paragraph. An order under this paragraph may prohibit the person to whom it applies from manufacturing for sale, offering for sale, distributing in commerce, or importing into the customs territory of the United States (as defined in general headnote 2 to the Tariff Schedules of the United States), or from doing any combination of such actions, with respect to the toy or article with respect to which the order was issued.".

(b) Section 15(d)(1) of the Federal Hazardous Substances Act, as redesignated by subsection (a) of this section, is amended by striking "subsection (b)" and inserting in lieu thereof "subsection (b) or (c)".

(c) Section 15(d)(2) of such Act, as so redesignated by subsection (a) of this section, is amended by inserting "toy," immediately before "article" wherever it appears.

(d) Section 15 (d)(2) and (e) of such Act, as so redesignated by subsection (a) of this section, is amended by striking "subsection (a) or (b)" and inserting in lieu thereof "subsection (a), (b), or (c)".

Senator **Kasten**. We will begin the hearing with Mr. Steeves, who will be speaking for Virginia Knauer. He is the Deputy Director of the U.S. Office of Consumer Affairs, and we are very pleased to have you with us today, Mr. Steeves.

STATEMENT OF ROBERT F. STEEVES, DEPUTY DIRECTOR, U.S. OFFICE OF CONSUMER AFFAIRS, ACCOMPANIED BY MICHAEL STEWART, GENERAL COUNSEL

Mr. **Steeves**. Thank you, Mr. Chairman.

Michael Stewart, our general counsel, is with me.

Virginia Knauer developed an urgent dental problem yesterday and sends her personal regrets that she could not be here personally to send her testimony.

Senator **Kasten**. We just hope that she is recovering, and on behalf of the committee we want to wish her well.

Mr. **Steeves**. The dental problem has been resolved, but she just does not speak very well this morning.

We appreciate this opportunity, Mr. Chairman, to appear before you and to present the U.S. Office of Consumer Affairs position on S. 2650, the Toy Safety Act of 1984. We commend you, Mr. Chairman, for your introduction of this bill and the subcommittee for these expeditious hearings.

This is very basic legislation to correct a very serious deficiency in the current laws designed to protect our Nation's children from toys and other articles intended for use by children that present a substantial risk of injury. The deficiency is the apparent legislative quirk which makes it often easier for the CPSC to recall products intended for adult use that present a substantial risk of injury than it is for CPSC to recall hazardous toys and other children's articles.

Ironically, this situation appears to be the result of an early, heightened congressional concern over toys and other child products, which made these products subject to regulation only under the Federal Hazardous Substances Act prior to the establishment of the Consumer Product Safety Act.

Though CPSC now has two methods of recalling hazardous toys and other children's products, both are unnecessarily cumbersome and time-consuming, and both are inferior to the authority now held by CPSC to protect the public concerning adult products.

My remarks are not meant to suggest that the Commission never receives cooperation during its negotiations. In fact, the Commission's negotiations sometimes result in quick cooperative responses. My remarks are aimed at the regulatory situation imposed on the Commission when persuasion is not successful and some mandatory action is required.

The first of these two methods is under the Federal Hazardous Substances Act and requires the CPSC to initiate a rulemaking proceeding, which can take up to 2 to 3 years to secure the final rule necessary for recall of a hazardous toy or children's product.

The second way for CPSC to proceed to recall an unsafe toy or children's article is a transfer under 30(d) of the Consumer Product Safety Act. Even though it would take less time—usually, based on the Commission records, between 4 and 14 months--this cumbersome procedure is just as unacceptable from a regulatory standpoint as the first procedure is a transfer under 30(d) of the Consumer Product Safety Act.

Particularly, when CPSC does not have to go through this type of a rulemaking proceeding before securing recall of most products intended for adult use. The Toy Safety Act will amend the Federal Hazardous Substances Act to allow CPSC to recall quickly those toys that present a substantial risk of injury.

No longer would a long-awaited final rule which bans a hazardous toy or article be required before the CPSC may recall the product that is in question. No longer would the CPSC be required to complete the 30(d) transfer proceeding using what amounts to regulatory fast footwork to transfer its regulatory functions from one act to the other.

Our Nation's children deserve better than these current procedures, which are lengthy, unduly cumbersome, and function only to delay unnecessarily removal of unsafe toys and other children's articles from the market.

This administration has sought from its outset to make sense of the regulatory morass which it initially found in many areas of Federal involvement in the marketplace. Over the past 3-plus years, many unnecessary economic rules and regulations have been modified, curtailed, or removed. But we have always especially protected those rules and regulations which safeguard our citizens' health and safety.

The Toy Safety Act addresses a situation which cries out for action because our children's health and safety are at risk. We are unaware of any opposition to your proposal, Mr. Chairman, by industry, by consumer groups, or by other governmental agencies. We urge the subcommittee to act promptly to move the bill forward for full committee approval and ultimate positive action by the Senate.

Thank you, Mr. Chairman, again for this opportunity to appear, and I would be pleased to answer any questions that you may have.

Senator KASTEN. Thank you very much.

Are we to understand that your support of this bill is an official White House position, or are you today appearing only on behalf of the Office of Consumer Affairs?

Mr. STEEVES. Mr. Chairman, on proposed pending legislation, our testimony is reviewed by OMB in the normal process to establish an administration position, and that was done in this case and our position does in fact represent the official White House position. In fact, in our discussions with the OMB examiners they indicated to us that we could proceed with assurance that if this bill arrives on the President's desk they would recommend that he sign it.

Senator KASTEN. I am hopeful that it will be arriving on the President's desk relatively quickly. As you know, there is a companion bill that was introduced by Congressman Waxman, I think on the same day that I introduced my bill here. He has already had hearings and we are hopeful that they are going to be proceeding at least through committee action.

Depending on how everything goes today, and I am optimistic that we will have strong support from all of the people testifying, we are hopeful that we will have this bill on the markup schedule on Tuesday next and we will be able to move forward at least through committee action here. So I am hopeful that we will be able to move forward and get it to the President's desk, and I am pleased that you indicate to us that he will sign it.

Mr. STEEVES. So far the news has been very encouraging.

Senator KASTEN. With your Consumer Office, are you undertaking any other initiatives or any new initiatives or anything that we should know about in the field of children's safety?

Mr. STEEVES. We have been focusing, Mr. Chairman, over the last several months on counterfeit products, consumer products throughout the market, and in that connection we are watching for evidence of counterfeit or knockoff toys or children's products which may pose dangers to users.

As you may know, the counterfeits are flooding the market in consumer products. We have a display going on now in New Orleans concurrent with the World's Fair showing a wide range of counterfeit products, from children's products to clothing to automobile parts to airplane parts. And the counterfeiters have copied everything from ET dolls to toy trucks and cars.

Our information in case studies indicates that once a particular toy is successful there are manufacturers, often foreign, sometimes domestic, which flood the markets with nearly identical products that are called knockoffs. Battery powered toy cars are particularly hard-hit, for instance, and stomper cars by Shaper Toys is one we've been looking at in the last several weeks.

Thus far the experts we have talked to have not been able to identify a safety problem with counterfeits or knockoffs. But the potential is very, very great in that marketing product area.

Of course, we have very good and cordial relations with the Consumer Product Safety Commission, with the Chairman and its Commissioners, and as soon as we would develop any evidence of a safety problem, I am sure that we would pass that information on to them for appropriate regulatory action. And we will also pass on that information to you, Mr. Chairman, and to Mr. Waxman in the House committee.

Senator **Kasten**. Well, we are anxious to continue to work with you. We have enjoyed the good working relationship that we have had with your office and with Virginia Knauer and we look forward to continuing to do that.

Thank you very much for your testimony here this morning. We look forward to working with you.

Mr. **Steeves**. Thank you, Mr. Chairman.

[The statement follows:]

STATEMENT OF VIRGINIA H. KNAUER, SPECIAL ADVISER TO THE PRESIDENT FOR CONSUMER AFFAIRS AND DIRECTOR, U.S. OFFICER OF CONSUMER AFFAIRS

Thank you, Mr. Chairman, for the opportunity to appear today before the Consumer Subcommittee and present the United States Office of Consumer Affairs' testimony on S. 2650, the "Toy Safety Act of 1984."

We commend you, Mr. Chairman, for your introduction of this bill, and we also commend this Subcommittee for these expeditious hearings. This is very basic legislation to correct a very serious deficiency in current laws designed to protect our Nation's children from toys, and other articles intended for use by children, that present a substantial risk of injury.

The deficiency I speak of is the apparent legislative quirk which makes it often easier for the Consumer Product Safety Commission to recall products intended for adult use, that present substantial risks of injury, than it is for CPSC to recall hazardous toys and other childrens' articles.

Ironically, this situation has come into being out of an early, heightened Congressional concern over toys and other child products safety, which made these products subject to regulation only under the Federal Hazardous Substances Act, the establishment of CPSC under the Consumer Product Safety Act.

The result is that the Commission now has two methods of recalling hazardous toys and other childrens' products, both of which are unnecessarily cumbersome and time consuming, and both of which are inferior to the authority now held by CPSC to protect the public concerning adult products.

I would only add here that my remarks are not meant to suggest that CPSC never achieves cooperation during negotiations. In fact, the Commission's negotiations sometimes result in quick response. Rather, my remarks are aimed at the regulatory situation imposed on CPSC when persuasion is not successful and mandatory action is required.

The first of these two methods is under the Federal Hazardous Substances Act (FHSA) and requires the CPSC to initiate a rulemaking proceeding (which can take two to three years) to secure the final rule necessary for recall of a hazardous toy or children's product. Under this rulemaking, the CPSC may not even begin a recall proceeding until it has finalized a rule banning the toy or article. This creates the dangerous situation where the hazardous toy or childrens' article can remain on the market during the time it takes to complete proceedings.

There is a second way for CPSC to proceed to recall an unsafe toy or childrens' article, but it is just as unacceptable from a regulatory standpoint as the first way—even though it would take less time, between four and 14 months. This cumbersome procedure is a "transfer" rule under 30(d) of the Consumer Product Safety Act. Just as it sounds, the Commission issues a final 30(d) rule, following notice and public comment, finding that it is in the public interest to regulate the risks of injury from the hazardous toy or article under the Consumer Product Safety Act rather than Federal Hazardous Substances Act. Unfortunately, while these days, weeks, and months go by, a hazardous toy or childrens' article can remain on the market. This situation is totally unacceptable; particularly, when the CPSC does not have to go through this rulemaking scenario before securing recall of most products intended for adult use.

The "Toy Safety Act" will amend the Federal Hazardous Substances Act to allow the Consumer Product Safety Commission to recall quickly toys, and other articles intended for use by children, that present a substantial risk of injury. No longer would a long-awaited final rule which bans a hazardous toy or article be required, before the CPSC may begin a recall proceeding. No longer would the CPSC be required to complete a "30(d) transfer" rulemaking proceeding, using what amounts to regulatory fast footwork, to transfer its regulatory functions from one Act to another.

Our Nation's children deserve better than these current procedures, which are lengthy, unduly cumbersome, and function only to delay unnecessarily the removal of unsafe toys and other childrens' articles from the market.

This Administration has sought from its very outset to make sense of the regulatory morass which it initially found in many areas of Federal involvement in the marketplace. Over the past three-plus years, many unnecessary economic rules and regulations have been modified, curtailed or removed; but, this Administration has always especially protected those rules and regulations which safeguard our citizens' health and safety. The "Toy Safety Act" addresses a situation which cries out for action because our childrens' health and safety are at risk.

We are unaware of any opposition to S. 2650 by the industry, consumer groups, consumers or government agencies.

We urge that the Subcommittee act promptly to move S. 2650 forward, for full Committee approval, and ultimate, positive action by the Senate.

Mr. Chairman, thank you, once again, for this opportunity to testify on S. 2650, and I would be pleased to answer any questions you or other Members may have.

Senator KASTEN. Our next two witnesses will appear together as a panel: Dr. Joseph Greensher and Charles Williams. First we will hear from Dr. Joseph Greensher, who is the chairman of the committee on accident and poison prevention, the American Academy of Pediatrics.

Dr. Greensher.

STATEMENTS OF DR. JOSEPH GREENSHER, CHAIRMAN, COMMITTEE ON ACCIDENT AND POISON PREVENTION, AMERICAN ACADEMY OF PEDIATRICS; AND CHARLES F. WILLIAMS, VICE PRESIDENT OF QUALITY, SAFETY AND INTEGRITY, MATTEL TOYS

Dr. GREENSHER. Mr. Chairman, thank you for allowing the American Academy of Pediatrics, the Committee on Accident and Poison Prevention, to present its support of the Toy Safety Act of 1984, S. 2650.

Play is an important part of children growing up. Children have been active, imaginative and innovative in a variety of play situations since antiquity. Toys give children an opportunity to develop and discover themselves through experimentation and participation, and it gives them an outlet for their energy.

Unfortunately, the joy of play is frequently marred with disability and occasional fatalities. The toys that play such an important role in their development can also be very harmful to children.

When we look at the numbers, they are staggering. There are over 150,000 different toys that are produced yearly worldwide. There are 1,500 toy manufacturers that produce these toys. The toy industry is the largest producer of automobiles in the world. It produces 150 million automobiles each year for children to play with. In the United States, 83,000 different toys are imported each year.

In the process of our children interacting with these toys, the Consumer Product Safety Commission has estimated that 123,000 children each year injure themselves and require emergency room treatment.

Senator **Kasten**. Would you repeat that? A total of 123,000 require emergency room treatment.

Dr. **Greensher**. Correct. We do not know how many hundreds of thousands seek medical aid from their private physicians on top of that.

In 1982, there were 17 fatalities related to toy injuries. That number, although it sounds staggering, is really 23,000 less than the 1977 figures. So we have made a little bit of progress in the injury field in toys.

The Consumer Product Safety Commission, as has been mentioned, has authority to ban toys under the Federal Hazardous Substances Act, but that procedure is so cumbersome that only 18 toys were recalled in the last year that I have seen statistics on. That includes 18 different models as well.

The Commission has set safety standards for toys that are electric in nature, for toys with sharp points, that have sharp cutting edges, that have lead paint, that have small parts in them. But it is the manufacturer's responsibility to assure compliance with these requirements.

As has been stated, our belief that there is a great deal of control over toys is really not correct if one recognizes how cumbersome the process is to recall these toys. The Toy Manufacturing Association voluntarily and in cooperation with the Consumer Product Safety Commission and in the past in cooperation with our committee, has passed safety standards for toys, but many of the toy manufacturers are not members of the Toy Manufacturers Association.

Now, the question of what toy hazards are still available in the marketplace. If we look, the No. 1 problem involving danger from toys is the risk of aspiration and ingestion of small parts of toys. Toys should be large enough so that children cannot swallow them and choke on them. The toy should not come apart or be easily shattered.

Toys for children under 3 years of age should not have small parts. They should not fit into an established standard truncated cylinder that the Consumer Product Safety Commission has developed. This measures 1¼ inches in diameter and then graduates in height from 1 to 2½ inches.

Small plastic parts in particular have been very burdensome to us. The problem with small plastic parts of toys in the past was that they were not x ray visible. If a child ingested one of these or if a child aspirated one of these where the piece would go into the airway and the child was taken to an emergency room and an x ray was taken, this piece would not be visualized and if the child was not in a great deal of distress he would frequently be sent home, only to be presented a few weeks later with recurrent pneumonia.

At that time if the mother recalled the episode and mentioned it to the medical personnel caring for her child, they would recognize that there was a possibility of a plastic piece being lodged in the lungs and the child would have to be bronchiscoped. Frequently to our surprise we would fish out various plastic pieces from the airway of these children.

Mattel Toys, in cooperation with the Accident and Poison Prevention Committee of the Academy of Pediatrics, recognized this need and, as Mr. Williams will tell us later, has developed a plastic that can now be x ray visible, and we hope that this will be a great advance in the morbidity and mortality of children aspirating small parts, and I was very happy to have participated in this.

Now, the second major problem of toys that relates to aspiration and ingestion is the mislabeling of toys or the lack of labeling of toys for small children. As far as lack of labeling, what frequently happens is toys intended for older children find their way into the reach of their smaller siblings, who aspirate the pieces from it.

As far as labeling is concerned, my wife went out on a shopping spree last night and came up with a few toys from a local store. What I have got here are some wooden toys that are produced in France. There are two labels on here. One says that this passed the requirements of safety of the French regulatory agency and the other one says that this toy is not to be used for children under 36 months of age. This was bought yesterday in Manhasset, NY.

The only problem with these labels is that they are in French. Now, our population is sophisticated, but I think this is asking a little too much. There is no label here in English indicating that this could be hazardous. Yet there is very good warning on here for French parents and French children.

The other toy is a little toy that is imported from China. There was a flood of these that came on the market last year toward the Christmas season. This is a little duck that you wind up that swims. If you feel this duck you will feel it has got rough edges that can catch and cut children.

The smaller children getting hold of this will mouth it. Small children investigate their environment by sticking stuff in their mouth and they are going to wind up injured with this. There is no label on this and nothing has been done.

This little ice cream man also comes from China. He is adorable, he moves very nicely. He sells very cheaply. I think he sells for $2.25. It is very hard to get an American toy for that price.

There are a few problems with him. With very little effort his head comes off and a small child can aspirate and choke on this.

This would be a beautiful fit in his mouth and choke him to death. And the rest of this, if you feel, will come apart very rapidly.

There was another toy that had a cyclist with it. The mother that brought me that toy also brought me this. These are the parts that were left over after 1 day of play with it. This is what's still available on the marketplace and why we need to pass this law.

New and potential hazards that are still around. We have all known that things like deflated balloons and plastic bags were hazardous to children for years. With the innovation of the Cabbage Patch Dolls, we found out that they now come with disposable diapers. We also became aware that the disposal diapers are a cause of choking in children, and this is something that we would like to see avoided in the toy area.

It is bad enough to have this as a potential hazard in their dress area where they are cared for, but to put it in the area where they play with toys I believe is unconscionable.

Other injuries that remain to be faced are burn and electric shock from toys. Catch injuries we have spoken about. Explosions and poisonings still occur from toys, as do lacerations. Noise injury. There are toys that produce noise of over 100 decibels that are injurious to hearing. Puncture and piercing injuries can still occur from toys, and if one feels the edges on here these will certainly puncture the skin without any trouble. Projectile injuries exist, as does strangulation.

The strategies for preventing these. We are trying very hard to have an education campaign. Both the Consumer Product Safety Commission and our committee are working on this. But this is insufficient. We need this law to give the Consumer Product Safety Commission teeth to enforce it.

We also need a Consumer Product Safety Commission that has adequate funding to enforce the law, Mr. Chairman.

Thank you.

Senator **KASTEN**. Doctor, thank you very much.

Our next witness on this panel is Mr. Charles F. Williams, who is vice president for quality, safety, and integrity of the Mattel Co. And I am particularly pleased, Mr. Williams, that you are with us this morning as a representative of your company and also as a representative of a toy manufacturer who obviously has shown an extraordinary amount of leadership and concern over the issues that we are addressing here this morning.

So I, on behalf of the committee, would like to commend and congratulate you for the work that you are doing. We are asking you to testify here this morning as an example, frankly, of the kind of work that we are hopeful that we can continue to encourage. So we are very, very pleased that you have come from California to appear before us this morning, and it is a pleasure to introduce Charles F. Williams from the Mattel Co.

Mr. **WILLIAMS**. Thank you very much, Mr. Chairman. It is a pleasure for me to be here. It is a pleasure for Mattel to be given an opportunity to testify at this hearing.

My name is Charles F. Williams. I am vice president of quality, safety, and integrity for Mattel Toys, which is headquartered in Hawthorne, CA. I joined Mattel in 1962 and have been responsible for the company's product quality and safety program since 1963.

My purpose today is to describe the development of a radiopaque or x ray visible plastic part in toys as a solution to a safety problem affecting young consumers. This program illustrates how industry and the medical profession can work together for the public benefit.

We at Mattel believe that safety is the most important component of our products. In the early 1960's we formed a department of product safety which soon became, and still remains, a responsible engineering group with the authority to cancel any toy project that fails to meet our rigorous requirements for safety.

We require premium materials in our product design specifications to make toys more safe and more durable. This quality grading means that toys last longer, stay safe, and reduce warranty costs, thereby proving that safe products do not necessarily increase the product cost. Quality materials also provide an increased play value for children.

Toys intended for older children are scrupulously monitored for safety and integrity, but toys intended for preschool and infants must meet even more demanding requirements.

It is generally accepted that older children can safely manipulate small parts that might be designed into their toys. These small parts are legal and are in widespread use. However, under the Code of Federal Regulations accessible small parts are forbidden in toys intended for children under 3 years, 36 months of age.

Nevertheless, small foreign objects can find their way into the mouths of the very young. In some cases the objects can be ingested into the digestive tract. Frequently they pass through the body and emerge uneventfully, as most mothers can attest.

Yet there are documented cases where the movement of the small parts through the body can be impeded. They may dwell long enough to cause damage to the esophagus or other internal organs without demonstrating immediately clinical symptoms which may make the parents aware that the child is in a poor condition.

In other instances, the foreign bodies can be aspirated into the respiratory tract, where they have a potential for more image. Sometimes the presence of the object is not apparent. Only when the lung rebels with an abscess, a collapse or even pneumonia are the parents and physicians alerted to action.

When a child seems to have ingested an object, he or she is often rushed to the physician's office for x rays. Too often the developed x rays fail to indicate the presence of the offending item in the child's lungs or stomach. A false negative observation occurs because the parts may not be x ray visible.

This difficulty had long concerned members of the Accident and Poison Prevention Committee of the American Academy of Pediatrics. At a meeting in Toronto, Canada, in the spring of 1979 the committee agreed that the medical profession's most frequent and serious safety problem with small parts for toys was the inability of these parts to register on x rays.

The committee asked if some program could be developed to make plastic parts x ray visible and invited Mattel to become involved in exploring solutions to the problem. Dr. Joseph Greensher, on my left here, has been a member and currently is chairman of the Accident and Poison Prevention Committee.

Mattel accepted this invitation. Our chemical, mechanical, and tooling engineers began researching the feasibility of formulating an x ray visible plastic material that would be completely safe, would not reduce the life of our costly molding and processing tools, could be made available worldwide, and would not significantly increase the cost of doing business.

Many series of tests were conducted with different materials until we selected barium sulfate as the optimum candidate. This material is widely used by the medical community as an opacifier in x-ray examinations of the gastrointestinal tract. It is an insoluble material which, encapsulated by a molding into a matrix of molten plastic, becomes the basis of our small parts.

In the course of our tests, we were given the green light by toxicological consultants. Further chemical and physiological testing proved the formula to be biologically safe. Mechanical tests of the physical properties were exceptionally rewarding, even at the required levels of 10 percent barium sulfate by weight.

Our most stubborn problem was one of aesthetics. With the addition of barium sulfate, the finished parts persisted in looking like a severe case of measles. This was overcome by processing techniques which we translated into manufacturing specifications when the procedure was perfected.

At appropriate intervals we discussed our progress or our difficulties with the Accident and Poison Prevention Committee of the Academy of Pediatrics for their information and counsel.

We introduced the x ray visible parts into our 1982 and 1983 product lines in increasing numbers. This year we expanded the program to introduce the process into all of the 1984 new products that contain loose small parts.

As a result of this development program, physicians now can identify and locate with x rays these small plastic parts that have been ingested or aspirated. This capability enables the physician to diagnose and treat the patient more effectively, at a lower cost to the consumer. It also reduces worry for the child, the parents, and the physician.

The results of this program were announced 10 weeks ago at the spring meeting of the Academy of Pediatrics in Phoenix, AZ, by Dr. H. James Holroyd, past chairman of the Accident and Poison Prevention Committee. This paper was entitled "Aspiration of Newer Radiopaque Plastic Parts."

Immediately after this meeting the president of Mattel Toys, Mr. Glenn Hastings, announced that the Mattel process, complete with specifications, was available free of charge to any toy manufacturer or producer of small plastic items. The response has been gratifying.

We believe the success of this program illustrates how cooperative efforts by industry and the medical profession serve to benefit children here and abroad.

Thank you very much.

Senator **Kasten**. Mr. Williams, thank you.

I think that the cooperative efforts between the medical profession and the industry, particularly Mattel, are certainly to be commended. I think that your development, Mattel's development of the x ray visible plastic and also your willingness to share this technology with other industry members, I think that is particularly significant. It represents a real breakthrough, and clearly it will save the lives of many children.

But also I think it demonstrates the kind of cooperative atmosphere that we are working to try to establish between industry and the private sector, the pediatricians, and other groups, and also the Consumer Product Safety Commission and, frankly, the Congress.

I just would like to ask both of you essentially the same question, and maybe, Mr. Williams, you can begin. Are there other kinds of cooperative industry safety efforts that are currently underway? Are there other things that the two of you are teaming up on after this significant success?

Mr. **Williams**. As a matter of fact, there are other projects that are being undertaken now. What we have done; we have relied on the American Academy of Pediatrics to give us a new list of priorities that they see from patients appearing in their offices. And based on that, we have established then projects that are ongoing, that we are undertaking, that we hope will come to fruition in the near future.

Senator **Kasten**. Dr. Greensher, can you be more specific, possibly, on some of the problems that you are finding now?

Dr. **Greensher**. There is one program I would like to mention, which is a cooperative venture between Government, industry, and the Academy of Pediatrics, and that is our TIPP program, T-I-P-P. It is The Injury Prevention Program. It was started out with seed money from the Office of Maternal and Child Health of HHS.

The program was introduced by the Surgeon General, Dr. Koop, at our April meeting in Philadelphia. The McNeil Consumer Product Co. is doing a good deal of the funding to make it possible for us to develop material for this program, and the American Academy of Pediatrics is presenting this to all its members to use as an ongoing teaching program in injury prevention to parents. And we think that this is the beginning of a very interesting combined project, and it is the first time that we have been able to combine all the aspects of Government, medicine, and industry like this.

Some of the other problems that Mr. Williams and I have been kicking around are the misuse of car seats. Car seats for children are very useful. They can save a great deal of lives. One of the problems we are running into is improper use in cars, not misuse.

And what we are hoping to be able to develop ultimately are some models that we can use to demonstrate safe use of car seats for parents. Bringing in a cumbersome car seat into a doctor's office to demonstrate how to properly put a child in is very awkward, but if we had some smaller models available I think we could make a great deal of progress in this and also show parents how to properly put it in their cars. We are looking to a solution for this.

Senator **Kasten**. Well, I appreciate your testimony, both of your testimonies here this morning. We look forward to working with you, hopefully for more of the kinds of successful joint projects that you have been able to describe here this morning. Thank you again for your testimony.

Our next panel will be a panel of the Consumer Product Safety Commission. We have with us this morning Nancy Harvey Steorts, who is the Chairman of the Consumer Product Safety Commission, along with Mr. Terry Scanlon, who is a Commissioner of the Consumer Product Safety Commission.

I just was told a moment ago that we are making progress on this legislation. In fact, yesterday the House subcommittee passed out the companion bill. So it looks as if we might even be having a race to see whether we are going to pass the bill in the House before we pass the bill in the Senate. I am very pleased to learn that Chairman Waxman has cleared this bill now through his subcommittee in the House of Representatives.

Nancy, thank you for joining us.

STATEMENTS OF HON. NANCY HARVEY STEORTS, CHAIRMAN, CONSUMER PRODUCT SAFETY COMMISSION; AND TERRENCE M. SCANLON, COMMISSIONER

Ms. STEORTS. Thank you and good morning, Mr. Chairman. My colleagues Commissioner Statler and Commissioner Armstrong unfortunately are not able to be here this morning. They are out of town. They did want me to express that to you.

It is music to our ears that this has already passed in the House subcommittee and we are delighted.

I would like to present first, Mr. Chairman, the testimony of the Commission as a whole, and then I have a very short personal statement that I would like to present.

It is indeed a pleasure for the Consumer Product Safety Commission to appear before you today to discuss S. 2650, the Toy Safety Act of 1984, and to review with you the legislative twist that the bill is designed to remedy. Quite simply, children do not today have the same protection under the law against products intended for them and found to be hazardous as adults have against most other unsafe products.

Ironically, toys and children's products were accorded a special status by being regulated first as a risk covered in the Federal Hazardous Substances Act before this agency was created. But they now are subject to a more cumbersome, impractical recall process because they are covered by an act which does not have a comprehensive recall provision. Today, because of this second class status for toys and children's products it is easier for CPSC to recall products intended for adults and which present substantial risk of injury than it is to recall hazardous products that are unregulated.

Mr. Chairman, the bills which you and Congressman Waxman announced on May 9 and the Senate version which you have before you today would rectify that imbalance of protection for children.

Under current terms of the Federal Hazardous Substances Act, the only provision for recall of a toy or children's product is after the product becomes a banned hazardous substance. Generally, this requires the agency to publish a rule banning or regulating the product, unless the Commission takes the unusual step of first declaring that product an imminent hazard, at which time the recall remedy is then available. The rulemaking process often requires 2 or 3 years.

The most expeditious process available now for recalling an unsafe toy or children's product that is not covered by an existing FHSA regulation or is not an imminent hazard is by transferring regulation of the risk of injury under section 30(d) of the Consumer Product Safety Act. This regulatory transfer from FHSA to CPSA is after notice and public comment and a finding that it is in the public interest to do so.

However, this process usually requires at least 6 months to complete, after which a recall proceeding under section 15 of the CPSA can be started. In the meantime, a toy or children's product considered to be hazardous indeed could remain in the marketplace. Yet the recall of most products intended for use by adults does not require this very lengthy transfer procedure.

Fortunately, Mr. Chairman, our negotiations with some industries have met with real cooperation and quick response when evidence of substantial risk of injury from their products is at hand. Some, however, have been more difficult to persuade. Some have used our procedural process to delay as long as possible the recall of a hazardous product.

A few examples of recalls under various circumstances are as follows, and I'm going to summarize these. One, stuffed toys with strings. In October and November of 1979, the staff received reports of two strangulation deaths associated with these products. The firm was contacted and a corrective action plan was negotiated during December 1979 and January 1980.

However, the recall effectiveness, especially among consumers, was very low. So in April–May 1980 additional corrective action was requested. The company refused. In June 1980 the staff recommended a section 30(d) proposal, which was published on November 17, 1980.

In order to conform the 30(d) rule to the statute as amended in August 1981 and in order to include additional products with the same risks of injury, the 30(d) rule was reproposed December 4, 1981, and a final 30(d) rule was published March 17, 1982.

On April 29, 1982, the staff forwarded a briefing package to the Commission with a complaint recommendation. The Commission on June 16, 1982, authorized the issuance of a complaint. At that point the company agreed to the corrective action recommendation and the Commission approved their response on June 24, 1982.

Squeeze toys are another area. In 1981 and 1982, our staff learned of two suffocation deaths involving squeeze toys that had handles with bulbous ends. The importer of those toys involved agreed to recall them. We collected and examined 130 squeeze toys from several manufacturers, among which 21 were identified as being substantially hazardous. Most of the firms are currently conducting voluntary recalls in cooperation with the Commission.

But again, two firms refused to recall their products. Again, a proposed 30(d) rule was published in January of 1983 and a final rule was published on January 5, 1984. Shortly before the rule became final, both firms agreed to undertake corrective action.

Mesh-sided cribs and playpens: After learning of the deaths of 11 young children in mesh-sided cribs and playpens when the sides had been left down, CPSC issued a complaint in the fall of 1983 against all manufacturers of these items, seeking extensive public notice and a recall under section 15 of the CPSA. And again, we had to go through the same rigorous process.

Enclosures were another area. Crib hardware was another area, and indoor gym houses were another area. And I would like to include the specifics of those cases in the record.

The Toy Safety Act of 1984, if passed, would expedite the corrective action of all such cases, except those where the industry involved responds readily and quickly. The bill would allow CPSC to use the same procedures to recall a hazardous toy that it now uses to recall other hazardous consumer products.

The procedure for recalling most consumer products, as you know, is relatively a simple one. Under authority of section 15 of the CPSA, the Commission may, after a public hearing, require the recall of consumer products that either: One, fail to comply with a consumer product safety rule and so create a substantial risk of injury to the public; or two, contain a defect which creates a substantial risk of injury to the public.

The section 15 recall authority has been one of our most effective tools in providing protection from substantial risks of injury in the marketplace. Regulation and standards, both voluntary and Commission-mandated, are effective for subsequent production. But a recall or corrective action program is often the only effective way to reach those defective products already in circulation or in the possession of consumers.

In reviewing some of the legislative background which left toys and children's products outside of the normal realm of the CPSA, it seems that this was indeed an unintended oversight brought on by an earlier effort to give special protection for toys. The effect has been truly a cumbersome system which can take months and in many cases years to recall a hazardous product destined for use by children.

Mr. Chairman, no consumer is more vulnerable to the hazards of product defects than little children. The Consumer Product Safety Commission has long recognized this vulnerability and has had a very deep interest in the special field of toy safety.

We have also worked very cooperatively with the toy manufacturers over the last 3 years since I have been Chairman in a very effective holiday toy safety program that has really done a great deal to educate consumers about the importance of buying the right toy for the right child. Age labeling on toys is a very important way that manufacturers can make toys safer for children.

A number of manufacturers and importers are already providing appropriate age labeling for their toys, particularly those intended for children 6 years old and under. The Commission hopes that toy manufacturers and importers will join us in providing this important information to prevent unnecessary accidents.

Regardless of such worthy programs, however, problems do sometimes arise in children's products. When we at CPSC learn of accidents from these products, it is our job to investigate and when necessary to act. A major difficulty we have faced in such situations involving toys and children's products has been this very complex, cumbersome process of effecting a recall or a corrective action program. Delays in such matters hardly seem justified.

It is a source of great satisfaction to the Consumer Product Safety Commission that the issue of toy safety is one that enjoys broad public support. This legislation should go far in enhancing one of the effective CPSC tools used in our toy safety responsibilities, and it should permit us now to utilize more effectively our legal resources currently employed in these 30(D) proceedings.

We at the Commission support the legislation proposed by you, Senator Kasten, and by Congressman Waxman. And I would like to just briefly now add a few personal comments.

I believe that this bill shows a sensitivity to the needs of the American consumer. This bill will hopefully correct a legislative quirk that for 10 years has hampered the ability of the Consumer Product Safety Commission to work expeditiously to protect the children of America.

I think also it is important to point out that there is indeed a difference in the way that we can respond to children's products versus our response to other products, and I would like to give you two examples, and I would like to go back to the squeeze toys.

Although most manufacturers were cooperative with the squeeze toy scenario, two firms were not. This meant that it took from 1981 to 1984 for the American marketplace to be free of a substantial product hazard. In contrast, manufacturers are also far more willing to take prompt corrective action for an adult product because they know that the Commission does not need to go through these protracted 30(D) proceedings, but instead can rapidly issue an administrative complaint to compel a recall or other appropriate corrective action.

A case in point is the Commission's recent voluntary recall on an electric space heater. This heater had been involved in six fires, including one in which an 18 month old baby perished. The Consumer Product Safety Commission contacted the manufacturer of this product in February of 1984 and the recall was announced in April of 1984—2 months, versus the 3 years it took on squeeze toys.

While we are talking about the safety of children's products, I would like once again to emphasize my belief that much more needs to be done in the area of age labeling. Age labeling is a key way that industry can help make toys safer for the individual child. I would like to see on every toy, particularly on those intended for children 6 years of age and under, appropriate age recommendations and an explanation of the safety reason behind the recommendation—in other words, better information for the consumer.

I am confident that the combination of better age labeling for toys and the ability now to recall hazardous children's products quickly will go far in reducing the tragic toll of toy-related injuries. Although toys are indeed safer on the whole now, there were still 123,000 injuries in 1982, and this figure is simply too high.

Mr. Chairman, I am pleased to hear that Virginia Knauer is supporting this legislation and that the Reagan administration is behind this important effort. And I would like to thank you personally and on behalf of the Commission for your leadership in bringing to fruition the Toy Safety Act of 1984.

[The statement follows:]

Statement of Hon. Nancy Harvey Steorts, Chairman, U.S. Consumer Product Safety Commission

Mr. Chairman, it is indeed a pleasure for the Consumer Product Safety Commission to appear before you today to discuss S. 2650, the Toy Safety Act of 1984, and to review with you the legislative twist that the bill is designed to remedy.

Quite simply, children do not today have the same protection, under the law, against products intended for them and found to be hazardous, as adults have against most other unsafe products. Ironically, toys and children's products were accorded a special status by being regulated first as a risk covered in the Federal Hazardous Substances Act (FHSA) before this agency was created. But, they now are subject to a more cumbersome, impractical recall process because they are covered by an Act which does not have a comprehensive recall provision. Today, because of this second-class status for toys and children's products, it is easier for CPSC to recall products intended for adults and which present substantial risks of injury, than it is to recall hazardous toys that are unregulated.

Mr. Chairman, the bills which you and Congressman Waxman announced May 9, and the Senate version which you have before you today, would rectify that imbalance of protection.

Under current terms of the Federal Hazardous Substances Act, the only provision for recall of a toy or children's product is after the product becomes a "banned hazardous substance." Generally, this requires the agency to publish a rule banning or regulating the product unless the Commission takes the unusual step of first declaring the product an imminent hazard, at which time the recall remedy is then available. The rulemaking process often requires two or three years. The most expeditious process available now for recalling an unsafe toy or children's product that is not covered by an existing FHSA regulation, or is not an imminent hazard, is by transferring regulation of the risk of injury under section 30(d) of the Consumer Product Safety Act (CPSA). This regulatory transfer from FHSA to CPSA is after notice and public comment and a finding that it is in the public interest to do so. However, this process usually requires at least six months to complete, after which a recall proceeding under section 15 of the CPSA can be started. In the meantime, a toy or children's product considered to be hazardous could remain in the marketplace. Yet, the recall of most products intended for use by adults does not require this lengthy transfer procedure.

Fortunately, Mr. Chairman, our negotiations with some industries have met with cooperation and quick response when evidence of substantial risks of injury from their products is at hand. Some have been more difficult to persuade. Some have used our procedural process to delay as long as possible the recall of a hazardous product.

A few examples of recalls under various circumstances are as follows:

(1) *Stuffed toys with strings.*—In October and November 1979, the staff received reports of two strangulation deaths associated with the products. The firm was contacted and a corrective action plan was negotiated during December 1979 and January 1980. However, the recall effectiveness, especially among consumers, was very low, so in April-May 1980, additional corrective action was requested. The company refused. In June 1980, the staff recommended a section 30(d) proposal, which was published November 17, 1980. In order to conform the 30(d) rule to the statute, as amended in August 1981, and in order to include additional products with the same risks of injury, the 30(d) rule was reproposed December 4, 1981, and a final 30(d) rule was published March 17, 1982. On April 29, 1982, the staff forwarded a briefing package to the Commission with a complaint recommendation. The Commission, on June 16, 1982, authorized the issuance of a complaint. At that point the company agreed to the corrective action recommendation and the Commission approved their response June 24, 1982.

(2) *Squeeze toys.*—In 1981 and 1982, our staff learned of two suffocation deaths involving squeeze toys that had handles with bulbous ends. The importer of the toys involved agreed to recall them. We collected and examined 130 squeeze toys from several manufacturers, among which 21 were identified as being substantially hazardous. Most of the firms are currently conducting voluntary recalls in cooperation with the Commission, but two firms refused to recall their products. A proposed 30(d) rule was published January 3, 1983, and a final rule was published January 5, 1984. Shortly before the rule became final, both firms agreed to undertake corrective action.

(3) *Mesh-sided cribs and playpens.*—After learning of the deaths of 11 young children in mesh-sided cribs and playpens when the sides had been left down, CPSC issued a complaint in the fall of 1983 against all manufacturers of these items seek-

ing extensive public notice and a recall under section 15 of the CPSA. Seven of the deaths occurred between 1981 and 1983. This matter is currently in litigation, with the manufacturers contesting the staff's position that it was in the public interest to recall and provide extensive public notice of the hazard involved. Trial is set for August 1984. The 30(d) rule was proposed in this case March 3, 1983, and issued in final form July 27, 1983.

(4) *Enclosures.*—Between 1980 and 1982, the staff received three reports of deaths and one report of brain damage caused by neck entrapment in enclosures—expandable cylindrical wooden enclosures intended to confine children. On June 15, 1983, the Commission published a proposed rule under section 30(d). A final 30(d) rule was published March 5, 1984. The staff has indicated that it may be necessary to seek compulsory corrective action under section 15 of the CPSA.

(5) *Crib headboards.*—Two models of cribs manufactured by one firm were involved in seven deaths. The firm agreed to recall the cribs and an extensive notification effort was conducted between 1978–80. After learning of two deaths during 1983, the firm agreed to another effort to notify the public about the hazard and the recall. If it had been necessary to go through the 30(d) procedures, the time to initiate both corrective actions by the firm and to notify the public would have been increased substantially.

(6) *Indoor gym houses.*—This case is similar to the crib headboard case in that the firm agreed to a second recall and notification effort. Two deaths led to the initial recall in 1980. The second effort was the result of a third death in 1982. These corrective actions and public notification efforts would have been substantially delayed if it had been necessary to follow the 30(d) procedures. In other words, if the industry had not been cooperative, our hands would have been tied for several months.

The Toy Safety Act of 1984, if passed, would expedite the corrective action on all such cases, except those where the industry involved responds readily and quickly. The bill would allow CPSC to use the same procedures to recall a hazardous toy that now can be used to recall other hazardous consumer products.

The procedure for recalling most consumer products, as you know, is relatively simple. Under authority or section 15 of CPSA, the Commission may, after a public hearing, require the recall of consumer products that either (1) fail to comply with a consumer product safety rule, and so create a substantial risk of injury to the public, or (2) contain a defect which creates a substantial risk of injury to the public. The section 15 recall authority has been one of our most effective tools in providing protection from substantial risks of injury in the marketplace. Regulations and standards, both voluntary and Commission mandated, are effective for subsequent production. But a recall or corrective action program is often the only effective way to reach those defective products already in circulation or in the possession of consumers.

In reviewing some of the legislative background which left toys and children's products outside of the normal realm of the CPSA, it seems that this was an unintended oversight brought on by an earlier effort to give special protection for toys. The effect has been a cumbersome system which can take months—and, in some cases, years—to recall a hazardous product destined for use by children.

Mr. Chairman, no consumer is more vulnerable to the hazards of product defects than children. The Consumer Product Safety Commission has long recognized this vulnerability and has had a deep interest in the special field of toy safety. For example, during the last three years, this agency has had a Holiday Toy Safety program before Christmas to promote safe buying practices and to caution adults about potential hazards in the children's market. This program has been held in cooperation with the Toy Manufacturers of America and has been very successful in reaching the buying public at a time when many toys are selected for children.

Age labeling on toys is a very important way that manufacturers can make toys safer for children. A number of manufacturers and importers are already providing appropriate age labeling for their toys, particularly those intended for children six years old and under. The Commission hopes that toy manufacturers and importers will join in providing this important information to prevent unnecessary accidents.

Regardless of such worthy programs, however, problems do sometimes arise in children's products. When we at CPSC learn of accidents from these products, it is our job to investigate and, when necessary, to act. A major difficulty we have faced in some situations involving toys and children's products has been the complex and cumbersome process for effecting recalls or corrective action.

Delays in such matters hardly seem justified, especially when considering the type of consumers who are at risk. It is a source of great satisfaction to this Commission that the issue of toy safety is one which enjoys broad public support. This legislation should go far in enhancing one of the effective CPSC tools used in our toy safety responsibilities and should permit us to utilize more effectively our legal resources currently employed in these 30(d) proceedings.

We support the legislation proposed by you and Congressman Waxman.

Thank you, Mr. Chairman, and we will be pleased to respond to any questions.

Senator **Kasten**. May I say, we thank you. And I think your example that it is tougher to get a squeeze toy off the market than it is to get a space heater off the market is particularly telling and particularly meaningful. I also think, though, that we are seeing an unusual degree of cooperation coming now from the toy manufacturers group overall, and I'm told that the testimony from Mattel is really the rule, not the exception to the rule. And more and more we are seeing that kind of cooperation.

I know that for your Christmas efforts on Christmas toys you had a lot of cooperation from the toy manufacturers' groups and other groups, and I think that for that kind of cooperative attitude you and your fellow Commissioners should be commended.

Commissioner Scanlon, is there anything that you would like to add to Chairman Steorts' statement?

Mr. **Scanlon**. Senator, I have a very brief statement. I can submit it for the record if you would like or I could read it.

Senator **Kasten**. Why do you not summarize your statement.

Mr. **Scanlon**. OK. First of all, I support the Toy Safety Act of 1984 and I want to commend you, Senator, for your efforts in introducing this legislation. I believe it is logical that regulatory procedures governing safety for articles intended for children should be no more encumbered than those intended for products aimed at the general population.

I think your bill ends this discrimination against regulation of children's products by eliminating the burdensome task of transferring risks in children's products when action is appropriate. I would like to offer two specific comments, if I may.

I was pleased yesterday that a House Energy and Commerce Subcommittee added the defect language. I think that is important as a regulator. I believe that this will provide us with clear legislative guidance when regulating not only toys but other areas that come under our aegis.

Second, I think that the added authority for the FHSA provided by the Toy Safety Act could be a double-edged sword, and let me explain that. When used appropriately, recall authority is a powerful and effective tool. On the other hand, I am concerned that by easing the road to litigation we may find ourselves abandoning rulemaking procedures that have so successfully governed the development of safety standards for children's products for the past decade.

Congressional oversight exercised over rulemaking has made rulemaking a less attractive prospect. When combined with easier access to litigation as an alternative way to reach the same results, agencies are likely to follow the course of least resistance—adjudication. That in large part bypasses consumer input, cost-benefit analysis, and other procedural requirements placed by Congress on the rulemaking process.

And the Committee on Governmental Processes of the Administrative Conference on which I have served for the last year as the CPSC representative, in its proposal to the conference on procedures for product recalls recently recommended stronger recall authority for Government agencies.

The committee points out, however, in these recommendations that: "The foregoing recommendations are not intended to encourage agencies to use recalls as a substitute for rulemaking, but merely to streamline the process of obtaining recalls where appropriate."

So the opportunity for abuse does not detract from the usefulness of S. 2650, but it does suggest that some guidance for the role of adjudication in the regulatory process may be appropriate.

What I would like to do is submit my complete statement for the record and also, Senator, if I may include the Committee on Government Processes proposed recommendations that I just referenced.

Senator **Kasten**. Both will be included in the record.

[The statement and material referred to follow:]

STATEMENT OF TERRENCE M. SCANLON, COMMISSIONER, U.S. CONSUMER PRODUCT SAFETY COMMISSION

I support the Toy Safety Act of 1984 (S. 2650), and welcome the uniformity that the bill will provide in regulating children's articles under the Federal Hazardous Substances Act (FHSA) and other products regulated under the Consumer Product Safety Act (CPSA). I commend Senator Kasten for his efforts in introducing this legislation in the United States Senate. It is logical that regulatory procedures governing safety for articles intended for children should be no more encumbered than those intended for products aimed at the general population. The Toy Safety Act will end any discrimination against regulation of children's products by eliminating the burdensome task of transferring risks in children's products when adjudicative action is appropriate. I would like to offer a few comments.

First, the recommendation to include in the bill language specifying that the adjudicative authority is triggered by a product defect is appropriate. The language is consistent with Section 15 of the CPSA, on which this amendment to the FHSA relies. Even more importantly, specifying defects that create a substantial risk of injury provides decidedly clearer legislative guidance to regulatory action. Many items, such as baseball bats and bicycles, can present a risk of injury in normal use that should not fall under regulatory action.

Secondly, the added authority for the FHSA provided by the Toy Safety Act may be a double-edged sword. When used appropriately, the adjudicative recall authority is a powerful and effective tool. On the other hand, I am concerned that by easing the road to litigation, we may find ourselves into abandoning rulemaking procedures that have so successfully governed the development of safety standards for children's products for the first decade of this Commission. Congressional oversight exercised over rulemaking has made rulemaking a less attractive prospect. When combined with easier access to litigation as an alternative way to reach the same results, agencies are likely to follow the course of least resistance—adjudication—that in large part bypasses consumer input, cost-benefit analysis, and other procedural requirements placed by Congress on the rulemaking process. The Committee on Governmental Processes of the Adminsitrative Conference of the United States, in its proposal to the Conference on procedures for product recalls, recently recommended stronger recall authority for government agencies. The Committee points out, however, in those recommendations that "the foregoing recommendations are not intended to encourage agencies to use recalls as a substitute for rulemaking, but merely to streamline the process of obtaining recalls where appropriate." The opportunity for abuse does not detract from the usefulness of S. 2650, but it does suggest that some guidance for the role of adjudication in the regulatory process may be appropriate.

Finally, I must mention age labeling, which is not related to the bill at issue but was raised last week at the hearing on H.R. 5630 before Congressman Waxman. Like any responsible parent, I support effective and instructive labeling on items intended for children. And like any good safety regulator, I am anxious to eliminate an unreasonable risk of injury when it arises. But age labeling regulation may be a repair in search of a hazard. While Commission research that will thoroughly analyze the problem is scheduled for fiscal year 1985, preliminary evidence recently presented to the Commission does not suggest any glaring problems. Age labeling is a concern that has been diligently addressed by industry for many years. I am certain that the Commission's voluntary cooperative efforts with the toy industry will result in improvements on the age labeling that already exists.

Committee on Governmental Processes Proposed Recommendation Twenty-eighth Plenary Session—Procedures for Product Recalls

Each year manufacturers recall millions of consumer products—ranging from toys and household appliances to drugs and autos—under an array of federal health and safety statutes. Most recalls are undertaken voluntarily, either on the manufacturer's own initiative or at the urging of a federal agency with recall authority. The recall remedy, while a valuable enforcement tool, is also one that is difficult to implement. A recall must be undertaken promptly if it is to serve its purpose of preventing injury. Further, to be effective, it must be implemented in a way that encourages public responsiveness.

For purposes of this recommendation, the term "recall" encompasses a variety of post-sale remedial actions by manufacturers and sellers of products, including: (1) notifying consumers of problems or potential problems with products; (2) offering to repair products; and (3) offering to refund the cost or to replace products. The recommendation is based, in part, on a study of the recall programs of three federal agencies that account for the great majority of recalls—the National Highway Traffic Safety Administration (NHTSA), the Food and Drug Administration (FDA) and the Consumer Product Safety Commission (CPSC).[1] Each of the three agencies studied has the authority to order at least one of the post-sale remedial actions noted above. Each is actively involved in recalls of consumer products that pose health or safety risks to the general public, instances where the need for effective use of the recall remedy is the greatest and its implementation is the most difficult. However, these recall programs differ with respect to standards for odering recalls, the scope of the remedy, and administrative procedures. Some of the differences are statutorily based; others grow out of varied methods of implementing the programs.

Although all three agencies make extensive use of recalls to implement their statutes, recalls have certain inherent limitations as enforcement tools. Consumers can, and sometimes do, render them ineffective by failing to respond. Further, recalls generally work well only if they are undertaken promptly and after a minimum of agency prodding. Recalcitrant firms can often thwart the effectiveness of the remedy merely by invoking available administrative procedures. There are a number of reasons for firms to be recalcitrant when faced with a possible recall. Companies may not enjoy much protection against product liability claims by recalling defective products—indeed, recalls can stimulate additional law suits. Recalls often bring adverse publicity, and they can be very expensive, requiring refunds or replacements of products that have already been produced and marketed.

Because recalls often work better than other remedies, however, they are a major enforcement tool of the three agencies studied. There are a number of reasons for their popularity. From the agencies' standpoint:

Recalls do promote safety. Although response rates are lower than agencies would like, consumers in significant numbers do return or discard recalled products or use them more safely.

Recalls establish precedents for what constitutes an unacceptably hazardous product.

Recalls operate more quickly and efficiently than most standard setting. In recall cases, government and industry often share a sense of urgency that a hazardous product should be removed from the marketplace. This has led agencies to adopt informal, flexible settlement procedures which have made it easier for companies to agree to undertake recalls.

Industries also may prefer recalls to standards as an enforcement tool because recalls generally affect only the makers of unsafe products rather than all product manufacturers. Recalls, unlike many standards, do not impose across-the-board certification requirements and may impose fewer recordkeeping requirements.

Agencies must reconcile several interests in implementing their recall programs. They must be sensitive to the potential for consumers to disregard recalls if the remedy is overused. They must stress voluntary agreements to achieve prompt—and therefore effective—recalls, yet be willing to use their enforcement powers if voluntary efforts stall. They must be flexible in negotiating the terms of recalls to encourage voluntarism, yet assure that the notice and remedy are adequate to inform and protect product owners.

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[1] Other agencies that engage in product recalls include EPA, FAA, HUD and USDA.

In general, agencies should work together to develop a more uniform approach to recalls. Despite the differences in the agencies' programs, they share common characteristics and goals, and they must all deal with the general public. Agencies could benefit from sharing with each other what they have learned about recalls, and the public could benefit from more consistency in the recall programs.

Agencies should also consider publicly classifying their recalls according to risk to help the public assess the hazards of recalled products. While this approach may present some problems in negotiating recalls, it recognizes the important role that the consumer plays as a partner with government and business in the recall process and the need to provide that partner with adequate information.

Moreover, additional enforcement tools are warranted for some agencies. As a practical matter, agencies cannot bring many enforcement actions, but the availability of these additional powers, and their occasional use when necessary, can assist agencies in negotiating voluntary recalls and in carrying out the overall aims of the recall programs. Even a relatively small number of enforcement actions ultimately serves the broader aim of encouraging voluntary compliance by others, and should therefore be streamlined where possible.

Three procedural reforms are recommended for the consideration of agencies with recall programs. First, such agencies should consider seeking broader statutory authority to require manufacturers to report safety defects. A provision similar to Section 15(b) of the Consumer Product Safety Act, which requires reporting of defects that "could create" a potential hazard, would give agencies earlier warning of defects and reduce their information gathering burden, without changing the standard for recalls.

The second recommended change would give agencies additional authority in cases involving serious or imminent safety problems. In general, if a case must be taken through both administrative and judicial proceedings, the process may be so lengthy that the recall could be ineffective, since most of the injuries will have occurred and the response rate will be low. Therefore, agencies should be given authority in especially hazardous cases to bypass the administrative hearing and to seek court-ordered recalls.

The third general reform is based on the premise that the availability of a variety of enforcement tools, such as court-ordered seizures and civil penalties, helps to induce voluntary cooperation with an agency's recall program. Seizure is not always an effective tool, however, unless the agency is able to detain products administratively at the point of distribution prior to filing a seizure action. CPSC and FDA, which have authority to seek court-ordered seizures, should consider the desirability of detention authority where it would aid their use of this enforcement tool. FDA should also seek civil penalty authority for statutory violations where it now only may seek criminal penalties.

Part of the recommendation is addressed specifically to the CPSC. The CPSC enforces four significant safety statutes: the Consumer Product Safety Act (CPSA), the Federal Hazardous Substances Act (FHSA), the Flammable Fabrics Act (FFA), and the Poison Prevention Packaging Act (PPPA). Both the CPSA and the FHSA give the agency the authority to orderrecalls, and this has become a favored enforcement tool of the agency. Under these two Acts, if a voluntary recall is not achieved, the agency must conduct a formal administrative hearing prior to ordering a recall. Under the CPSA, the agency may go directly to court to seek a recall if the product involved is "imminently hazardous." Under the FHSA, the agency may proceed administratively against imminently hazardous products. Neither Act contains a judicial review provision, with the result that "non-statutory" review of agency recall orders occurs in the United States District Courts. The absence of a judicial review provision for recall orders under the CPSA and FHSA should be corrected. Congress should provide for judicial review in the United States Courts of Appeals under the "substantial evidence" test.[2] This would eliminate the existing, lengthy, two-tiered judicial review procedure. The FFA and PPPA omit recall provisions entirely, causing uncertainty as to the Commission's ability to use recalls against unsafe products governed by either of these Acts. It would promote recall uniformity and reduce delay if the Commission could address the risks posed by all products under its jurisdiction under the procedures of Section 15 of the CPSA.

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[2] See ACUS Recommendation 75-3, The Choice of Forum for Judicial Review of Administrative Action, 1 CFR 305.75-3.

RECOMMENDATIONS

A. Coordination of recall activities

1. *Interagency recall liaison group.*—A group consisting of representatives from all agencies with recall programs should be established to inform each other about their programs and to share research in areas of common interest, such as how to improve consumer response rates and how to use new technology to improve recall notification.

2. *Recall notices.*—Recall notices should clearly describe the nature of the defect and the nature and extent of the risk of harm that prompts the recall. Individual agencies should consider whether their mission would be advanced by classifying recalls according to risk. The interagency liaison group could explore the possibility of coordinating the classification systems so that the agencies use similar terminology to designate levels of risk.

3. *Improved handling of consumer inquires and complaints.*—Consumers do not always know which agency takes complaints or has information about recalls. Agencies with recall programs should establish a central interagency switchboard to take all calls and refer them to the appropriate agency. As an alternative, agency personnel designated to receive inquires or complaints relating to product defects should be made aware of the recall programs of other agencies, so that inquiries or complaints will be referred to the proper office.

4. *Publicizing recalls.*—Each agency should seek to develop a method of publishing periodically an up-to-date list of active recalls within the agency's jurisdiction.

B. Procedural improvements

1. Agencies with recall programs should have statutory authority to require manufacturers to give the agency information in their possession about potential safety-related defects in their products, which could create a substantial risk of injury to the public. Such authority should be accompanied by appropriate incentives for compliance. To the extent that agencies with recall programs lack this authority, they should consider asking Congress to grant it.

2. Agencies with recall programs for defective products should be authorized to bypass administrative hearings and to seek court-ordered recalls in cases of serious safety problems as defined by the relevant statute. Agencies that lack such authority should consider asking Congress to grant it.

3. Court-ordered seizures, which are enforcement tools that augment some agency recall programs, can be made more effective if agencies also have authority to detain products prior to seizure. Agencies authorized to seek seizures should consider seeking statutory authority to detain products administratively.

4. Congress should streamline the Consumer Product Safety Commission's recall authority by amending the Consumer Product Safety Act (a) to give the Commission specific authority to seek recalls of all products within its jurisdiction, including those now subject to the Federal Hazardous Substances Act, the Flammable Fabrics Act and the Poison Prevention Packaging Act; and (b) to provide for judicial review of agency ordered recalls in the United States Court of Appeals under the "substantial evidence" test.

5. The Food and Drug Administration should be given civil money penalty authority as an option where only criminal penalties are now available.[3]

6. The foregoing recommendations are not intended to encourage agencies to use recalls as a substitute for rulemaking, but merely to streamline the process of obtaining recalls where appropriate.

Senator **Kasten**. Let me just say, I understand the point that you are making about rulemaking versus recall. It is not our intention to substitute recalls for the overall rulemaking process. Frankly, I think the rulemaking process is essential and is very, very important, especially as we are trying to develop now a more cooperative atmosphere between the manufacturers and Government.

I think the rulemaking process is critical, and we will be working with you and the chairman as we kind of watch how these things develop. And it is not our intention in any way to have this as a substitute for rulemaking. It is our intention, in your words, to streamline the recall process where it is in fact appropriate.

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[3] See ACUS Recommendation 72-6, Civil Money Penalties as a Sanction, 1 CFR § 305.72-6.

Nancy, do you or other Commissioners have an objection to adding the word "defective" to the bill in order to make the recall procedures for toys and children's products parallel to those currently in the CPSC?

Ms. STEORTS. Mr. Chairman, in my comments before Congressman Waxman I preferred to have a broader perspective. However, if it means that we could expeditiously get this bill moved forward, and it does parallel what we already have in the CPSA, I frankly at this point would not have any objection to that.

Senator KASTEN. Good.

OK, thank you very much. And the committee and I personally are pleased, No. 1, that the two of you took the time out of your schedules to appear before us today. Also, we very much appreciate your help and your support. Frankly, that kind of help and support makes it more likely that we will in fact have a bill on the President's desk.

Mr. SCANLON. Thank you.

Ms. STEORTS. Thank you very much, Mr. Chairman.

Senator KASTEN. I am told—Nancy, maybe you might want to stay there a minute. I am told that you are prepared and you have a staff person here that would very briefly go through some of the products, or maybe you would like to do that yourself, the problems with one or two of the things that are here before us.

Ms. STEORTS. This is the mesh-sided playpen that I referred to in my testimony, Mr. Chairman. The problem with this is that most consumers, when they bring a brand new baby home from the hospital, assume that that little one cannot wiggle or move around at that age. The problem is that when parents see a playpen or crib like this, they would put the baby into the playpen in a position such as this, and would not realize that they should always keep the sides of the crib or playpen up.

Unfortunately, the baby does move around, and if this crib or playpen is left in the down position, such as this, what happens is that the child can move down into the mesh, and suffocation can result. We have had several deaths from this. There is nothing sadder than to find a report that a child has died from a situation like this.

Now, the correction for this obviously is that if a consumer has a mesh-sided crib or playpen they should always leave the sides up and then the baby in it will not have the problem of rolling into the mesh. This is a situation where we are asking the manufacturers to put labels on this product. We hope that this is a program that they will work very cooperatively with us on, and that this problem will be corrected.

But it is again a scenario where many people do not realize what can happen to a brand new baby if the sides of the equipment are not in the up position.

Senator KASTEN. I am told that there were a number of deaths that were caused by a playpen, a mesh playpen similar to this. Could you describe to us how long, if you happen to remember, how long it took to get this particular—I am told there were 11 deaths from that particular product. Do you happen to remember how many months it took in order to get that product off the market?

Ms. STEORTS. We have had 11 deaths from this particular situation. And John Preston, why don't you just give an overview of where we are in the situation.

Mr. PRESTON. At the present time, the Commission's compliance staff is negotiating or going to litigation to get more notice from the manufacturers of these products, notice to the consumers.

Senator KASTEN. Why do you not take maybe one more example? I do not think we have to go through all of them, and I am worried that we do not want to run out of time.

Ms. STEORTS. This crib exemplifies what we have seen with the crib hardware problem. We have been working with the manufacturers on improvement of crib hardware.

And John, why don't you speak to exactly what is happening to this on the voluntary standard.

Mr. PRESTON. I just returned yesterday from Philadelphia, where I attended a meeting with industry representatives in a voluntary standards forum where we are actually developing standards to improve the hardware on cribs. One of the suggestions yesterday was that the crib mattress support, the frame in which the mattress rests, should withstand a 30-pound upward force which it may be subjected to when a consumer is making up the bed in a crib, and it should withstand disconnection from the end panels of the crib under this 30-pound force.

This particular crib would not comply with that requirement. If you apply an upward force, as you might when you are making up the bed, these brackets that attach to hooks on the end panels will disconnect. And in some cases a baby has been put to sleep in a crib with one of these disconnected, unknown to the parent, and during the night the baby may move over to the disconnected corner. And if this has completely disconnected, there is no support and the child can either fall completely out of the crib or, worse still, become trapped between the mattress support and the side rail.

So the industry is responding for prospective production on this particular problem.

Senator KASTEN. Thank you both very much.

We have a vote on the floor, and what I think I will do before Mr. Aaron Locker appears is I will recess the subcommittee hearing for approximately 5 minutes while I go to vote, and we will come back and resume at roughly 11:15. The committee will stand in recess.

[Recess.]

Senator KASTEN. The committee will come to order.

Our next witness is Mr. Aaron Locker. Mr. Aaron Locker is counsel for the Toy Manufacturers of America. Mr. Locker, we are happy to have you here with us today.

STATEMENT OF AARON LOCKER, COUNSEL, TOY MANUFACTURERS OF AMERICA

Mr. LOCKER. I am happy to be here this morning, Senator, particularly to express the views of the Toy Manufacturers of America.

TMA does not oppose the principle of equivalency of regulation. We believe, as you do, and as Representative Waxman on the House side does, that consumer products other than toys, and toys should be regulated with respect to adjudicative proceedings under section 15 of the CPSA in the same way. The extra step in rulemaking is not necessary.

We do, however, wish to emphasize that what we do prefer—what we do not oppose—is equivalency, and this bill as introduced is significant in that, in one important respect, it fails to provide that equivalency. That is, the bill reaches nondefective toys and other articles intended for use by children which present substantial risks of injury, either by virtue of the pattern of the risk, the number of products which present the risk, the severity of the risk, or otherwise.

We believe that language is not the same as that which is contained in sections 15 (c) and (d) of the Consumer Product Safety Act, because what it omits is the requirement that the product—which presents the substantial risk of injury—also be a defective product. If you review sections 15 (c) and (d) of the Consumer Product Safety Act, you will observe that the concept of substantial hazard and the right and power of the Commission to reach products for recall purposes applies only to defective products.

In our comments, therefore, we have recommended that your bill be amended to apply to defective toys and defective childen's articles which present substantial risks of injury. Furthermore, as you will note from the array of products here, the bill reaches all articles intended for use by children, not only toys. We recommend therefore that the title of the bill be changed from the Toy Safety Act of 1984 to the Child Protection Act of 1984.

I am told that that title may have been preempted by some children's pornography legislation. If that is the case, we are amenable to another change which does not necessarily focus entirely on toys, to be called the Children's Safety Act, the Children's Safety and Protection Act, or some other title which is suitable.

Since I have been at this process for a long time, having testified originally in 1969 upon with the Toy Safety and Child Protection Act which gave rise to the Federal authority to regulate children's product hazards, I'd like to take a somewhat different perspective this morning and really ask the question, why are we here?

The bill, known as the Child Protection Act and Toy Safety Act of 1969, has been law for 15 years. Why suddenly, after 15 years, is it necessary for the Congress to address the issue of the extra rulemaking step? What has happened to suddenly bring to bear the energies of both Houses of Congress and the testimony of consumer groups and the Commission on this extra rulemaking step that has been around for 15 years?

There is a very simple answer, and Commissioner Scanlon touched on it very briefly. I would like to elaborate on it more fully. Since the Consumer Product Safety Amendments of 1981—and by the way, you may recall, Senator, that I testified during the hearings on those amendments, which dealt rather extensively with the revision and overhauling of the Commission's rulemaking process—it has been our experience that, especially in the area of children's products, the Commission has totally abdicated rulemaking in favor of adjudication under section 15 of the CPSA.

It has not undertaken and adopted since 1981 any proposal to develop a rule or standard for children's products. Rather, it has decided to proceed by adjudication and recall under section 15.

The defenses urged by the manufacturers, whatever the merits may be—and I do not wish to go into them right now—included, among others, the question of the necessity or legality of the Commission's findings under section 30(d).

I should say that the extra step which this act will eliminate, that of making a finding under 30(d), can be taken by the agency in 30 days. I do not know why it has taken longer, as much as a year. But I do know that the reason the Commission has resorted to this extra legislative effort has been its total abdication of rulemaking, its total abdication of the letter and the spirit of the 1981 amendment with respect to rulemaking, and the carefully crafted provisions for cost-benefit analysis, regulatory flexibility determinations, and the procedures for advance notice of proposed rulemaking.

The very considerable evaluations which have to be undertaken by the agency as a precondition to the promulgation of a rule have been totally ignored in the rush to adjudication. And in that rush to adjudication this difference in treatment of toys on the one hand, and other consumer products on the other, arose or became apparent.

I would therefore direct your attention, Senator, very respectfully, to the fact that there has been a total flouting of the congressional will and intent incorporated in the 1981 amendments by the Commission's having abdicated rulemaking in favor of adjudication. And that is why we are here today.

Again, we are not here to oppose your bill, only to ensure the equivalence which both you and Representative Waxman sought. At your conference announcing the proposed legislation, you said you wanted to remove dangerously defective toys and other children's articles. We think the concept of defect, which I was pleased to hear you announce this morning was incorporated in the House bill, is essential, and in our written comments we have submitted suggestions and proposals for amending the bill to introduce the language which appears in the Consumer Product Safety Act, and which is applicable to all other products, into this legislation. This would provide equivalency, namely, to reach only those defective toys and children's articles which present substantial risks of injury.

Having said that, I would like to thank you for the opportunity of appearing, and I would be happy to answer any questions you or your staff might care to pose.

Senator KASTEN. Mr. Locker, thank you, and I appreciate your thoughtful and helpful criticism. I think we all agree—I know we all agree—that the purpose of this legislation is to make the same procedures apply to the recall of toys and children's articles which currently apply to the recall of most other consumer products.

In my discussion with Commissioner Scanlon and also in the question to Commissioner Steorts—Chairman Steorts, I think it is clear that we will make that technical change so that it does apply to defective products. The goal is to make the provision in the Federal Hazardous Substances Act equivalent to the provision in the Consumer Product Safety Act.

Mr. LOCKER. We appreciate that.

Senator KASTEN. We will go forward. I also am particularly interested in your comments. I listened carefully when Commissioner Scanlon touched on this whole rulemaking versus recall process, and you have been much more direct.

It is this subcommittee—this chairman—that wrote those changes.

Mr. LOCKER. I remember very well.

Senator KASTEN. Working with you and with others. And in no way do we want to take away the recall. I do not in any way want to eliminate the recall. I want in fact to expedite the recall process when it is needed. But that ought not to take the place of the process that we worked so hard to try to establish in that bill of rulemaking and of a consulting kind of process.

So I appreciate your comments and I am sure that the subcommittee will take them into consideration as we work on our periodic review and reauthorizations of the Consumer Product Safety Commission.

Thank you very much for your testimony.

Mr. LOCKER. Thank you.

[The statement follows:]

STATEMENT OF AARON LOCKER, COUNSEL, TOY MANUFACTURERS OF AMERICA

We represent Toy Manufacturers of America, Inc. (TMA). TMA is a trade association of domestic manufacturers and importers of toys, games and Christmas decorations whose members account for 90 percent by volume of the approximately 5.3 billion dollars in annual sales of toys, games and decorations at the wholesale level.

TMA has received a copy of the Bill you propose to introduce in the Senate commonly referred to as the Toy Safety Act of 1984. TMA submits the following comments on the Bill:

1. *The title.*—The Bill is entitled the Toy Safety Act of 1984. The Bill, however, seeks to regulate not only toys but other articles intended for use by children. As such its scope is very broad. Several examples of allegedly dangerous products exhibited at the press conference introducing the Bill, included children's articles other than toys. For that reason, TMA suggests the Bill be renamed the Child Protection Act of 1984.

2. *Absence of defect and failure to provide equivalency with provisions of section 15(b), (c) and (d) of the Consumer Product Safety Act.*—Both you and Representative Waxman at the time of the introduction of legislation indicated that the Bill purported to seek equivalency with the provisions of the Consumer Product Safety Act (CPSA). The repeated reference was made that toys and other children's articles should be treated the same way as toasters for the purposes of applying the remedies of Section 15 and that recalls should not be delayed because of the necessity of transferring the regulation of a risk of injury from the Federal Hazardous Substances Act to the Consumer Product Safety Act. TMA does not oppose such action in principle, however, it does oppose the provisions of the Bill which do not provide such equivalency.

We are annexing a copy of the Bill as revised by us in such manner as to insure equivalency. In essence we are proposing that the language which would permit adjudicative proceedings against toys or other children's articles that contain defects which present a substantial risk of injury is essentially the same as that contained in Section 15(c) and (d) of the CPSA. We have done so by incorporating the language in Section 15(c) and (d) of the CPSA in the text of the Bill amending Section 15 of the FHSA, to provide for notification and repair, replacement or refund of toys or other children's articles which are determined by the Commission to contain a defect which presents a substantial risk of injury to children. We believe, it is only toys or other articles which contain a defect which should be subject to this provision. Adopting the phrase "defective toy or other article" as it appears in the amended text of the Bill, will, in our opinion insure equivalency with the provisions of Section 15(c) and (d) of the CPSA and will achieve your aim.

If the reach of the statute is intended to go beyond "defective" toys and other children's articles, TMA opposes such legislation as unwarranted, since, unlike remedies for other consumer products contained in Sections 15(c) and (d), it would allow the removal of nondefective products. If a defect exists for any reason (i.e., construction, manufacture, or design, etc.) which creates a substantial risk of injury the Commission, under our proposal, will be given authority to remove the defective product from the stream of commerce. We do not believe that a regulatory agency should be given the power to remove nondefective products from commerce, nor do we believe that such power is being sought or is intended to be conferred upon the Commission by the Congress.

Note the provisions of the National Traffic & Motor Vehicle Safety Act (Section 154(a)(1)) which like the CPSA also limit recalls to defective vehicles or equipment which relate to motor vehicle safety. See also the provisions of Radiation Control Act, Section 359 which also provide for adjudicative recall of defective products within the purview of the statute.

3. *Inaccurate examples of products.*—The two examples of defective toys given at the press conference which were allegedly delayed in recall because of the requests of Section 30(d) of the CPSA were not entirely correct.

The defective string-suspended-stuffed toy was immediately voluntarily recalled by the manufacturer, who engaged in extensive recall efforts. Similarly, there was no delay in the recall effort undertaken for the squeeze toy which you exhibited. That toy was also immediately voluntarily recalled by the manufacturer. The squeeze toy in question was not the issue. Two other manufacturers whose toys had never been involved in injury or death, but, whose toys were nonetheless the subject of the recall request, and who objected to the determination that the toys presented an alleged substantial risk should have been cited as examples. Those toys were allegedly similar to the recalled squeeze toy. When the manufacturers contested their similarity and associated risk and sought a hearing with respect to these issues, a rulemaking proceeding to transfer risk of injury from the FHSA to the CPSA was begun. Subsequently the two manufacturers voluntarily recalled these toys without the need for additional Commission action.

4. *Inclusion of the term retailer.*—To further insure conformity with the provisions of Section 15(c) and (d) of the Consumer Product Safety Act we suggest and support the substitution of the term "retailer" in lieu of "dealer" whenever this term appears in the Bill.

TMA therefore respectfully requests that the proposed Bill be amended as set forth in this letter and in the annexed draft, which has been modified to reflect these changes.

Attachment.

[STAFF WORKING DRAFT]

April 19, 1984

A bill to enable the Consumer Product Safety Commission to protect the public by ordering notice and repair, replacement or refund of certain toys or articles intended for use by children if such toys or articles *contain defects which* create substantial risk of injury to children

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. That this Act may be cited as the *"Child Protection* [Toy Safety] Act of 1984."

Sec. 2. (a) Section 15 of the Federal Hazardous Substances Act (15 U.S.C. 1274) is amended—as subsections (d), (e) and (f), respectively; and

(2) by inserting immediately after subsection (d) the following:

"(c)(1) If *the Commission determines that* any toy or other article intended for use by children that is not a banned hazardous substance *contains a defect which* creates a substantial risk of injury to children (because of the pattern of *the defect,* [risk,] the number of *defective products distributed in commerce* [toys or such articles presenting a risk], the severity of the risk, or otherwise) and the Commission determines (after affording interested persons, (including consumers and consumer organizations, an opportunity for a hearing *in accordance with the provisions of subsection (e)* that notification is required to adequately protect the public from such toy or article, the Commission may order the manufacturer or any distributor or *retailer* [dealer] or *such* [the] toy or article to take any one or more of the following actions:

"(A) To give public notice that *such defective* [the] toy or article creates a substantial risk of injury to children.

"(B) To mail such notice to each person who is a manufacturer, distributor or *retailer* [dealer] of such toy or article.

"(C) To mail such notice to every person to whom the person giving notice knows such *defective* toy or article was delivered or sold.

An order under this paragraph shall specify the form and content of any notice required to be given under the order.

"(2) If *the Commission determines that* any *such defective* toy or article intended for use by children that is not a banned hazardous substance creates a substantial risk of injury to children (because of the pattern of *defect* [risk], the number of *defective products* distributed in commerce [toys or such articles presenting a risk], the severity of the risk, or otherwise) and the Commission determines (after affording interested persons, including consumers and consumer organizations, an opportunity for a hearing) *in accordance with the provisions of subsection (e)* that action under this paragraph is in the public interest, the Commission may order the manufacturer, distributor or *retailer* [dealer] to take whichever of the following actions the person to whom the order is directed elects:

"(A) If repairs to or changes in the toy or article can be made so that it will not *contain a defect which* creates a substantial risk of injury to children, to make such repairs or changes.

"(B) To replace such toy or article with a like or equivalent toy or article which does not *contain a defect which* creates a substantial risk of injury to children.

"(C) To refund the purchase price of *such* [the] toy or article (less a reasonable allowance for use, if *such* [the] toy or article has been in the possession of the consumer for one year or more—

"(i) at the time of public notice under paragraph (1)(A), or

"(ii) at the time the consumer receives actual notice that the toy or article *contains a defect which* creates a substantial risk of injury to children, which first occurs).

"An order under this paragraph may also require the person to whom it applies to submit a plan, satisfactory to the Commission, for taking the action which such person has elected to take. The Commission shall specify in the order the person to whom refunds must be made if the person to whom the order is directed elects to take the action described in subparagraph (C). If an order under this paragraph is directed to more than one person, the Commission shall specify which person has the election under this paragraph. An order under this paragraph may prohibit the person to whom it applies from manufacturing for sale, offering for sale, distributing in commerce, or importing into the customs territory of the United States (as defined in general headnote 2 to the Tariff Schedules of the United States), or from doing any combination of such actions, with respect to the toy or article with respect to which the order was issued.".

(b) Section 15(d)(1) of the Federal Hazardous Substances Act, as so redesignated by subsection (a) of this section, is amended by striking "subsection (b)" and inserting in lieu thereof "subsection (b) or (c)".

(c) Section 15(d)(2) of such Act, as so redesignated by subsection (a) of this section, is amended by inserting "toy," immediately before "article" wherever it appears.

(d) Section 15(d)(2) and (e) of such Act, as so redesignated by subsection (a) of this section, is amended by striking "subsection (a) or (b)" and inserting in lieu thereof "subsection (a), (b) or (c)".

Senator KASTEN. Our next panel includes Mr. Greenberg, Mr. Silbergeld, and Ms. Meier. Our first witness will be Mr. David Greenberg, who is the legislative director of the Consumer Federation of America. Mr. Greenberg.

STATEMENTS OF DAVID I. GREENBERG, LEGISLATIVE DIRECTOR, CONSUMER FEDERATION OF AMERICA; MARK SILBERGELD, DIRECTOR, WASHINGTON OFFICE; AND MICHELLE MEIER, COUNSEL FOR GOVERNMENT AFFAIRS, CONSUMERS UNION

Mr. GREENBERG. Thank you, Senator Kasten. On behalf of CFA's 200 organizations and their 35 million members, I would like to thank you for the opportunity to testify on S. 2650, the Toy Safety Act of 1984 or the unnamed act of 1984, depending on——

Senator KASTEN. It will have a name.

Mr. GREENBERG. We want to offer our full support to this legislative effort, if not to the renaming effort. We hope to assist you in putting a bill on the President's desk during this session.

When the public is asked about the important tasks for Government action, toy safety stands at the top of the answer list. The Lou Harris survey, "Consumerism in the Eighties," provides strong evidence of this sentiment. Fully 88 percent of those surveyed felt that Government should approve new toys before they are allowed on the market. Imagine the response to a question about removing unsafe toys from the market.

Given this paramount concern about effective regulation of toy safety, it is ironic that we have given regulators weaker enforcement tools in the toy safety area than in many others, and it is this inequality that S. 2650 seeks to rectify.

Now, you have seen the examples, you have heard from the Commission, you understand the time involved and the obstacles involved in the current regulatory process. So I would just like to be as brief as possible and give you three reasons why we think this legislation is necessary and necessary right now.

First, the failure to enact legislation is a failure to prevent preventable injuries and deaths. The delays of months and years force upon the CPSC by its inadequate procedures inevitably will keep certain dangerous toys on the market long enough to cause unnecessary accidents, injuries, and deaths.

Second, it is not the safety conscious toy manufacturers that would be harmed by the enactment of S. 2650. Such firms agree to voluntary recall plans as soon as they learn about the hazards created by their toys. It is the recalcitrant toy companies that S. 2650 will affect. But if this legislation passes, no firm will be able to gain a small advantage over its competition through procedural delay, as is the case right now.

Third, the toy safety procedures problem illustrates that the CPSC needs strong mandatory powers to enable it to maximize voluntary Government-industry cooperation and to minimize command and control regulation. The weakness of the Commission's power in the toy safety area does not create less regulation. Instead, it only serves to draw out the regulatory process, to the advantage of the least public spirited industry members.

In contrast, the stronger procedures accorded the CPSC by S. 2650 would shorten the regulatory process and reward firms that put safety first. So we believe the record is clear. Hazardous toys must receive equal treatment under the CPSC's governing statute. S. 2650 provides that equal treatment by making a series of simple conforming amendments.

We urge you to encourage the committee to act favorably on this bill as quickly as possible and we offer any help we can provide.

Thank you.

[The statement follows:]

STATEMENT OF DAVID I. GREENBERG, LEGISLATIVE DIRECTOR, ON BEHALF OF CONSUMER FEDERATION OF AMERICA

Mr. Chairman and Members of the Subcommittee, I am David I. Greenberg, Legislative Director of Consumer Federation of America (CFA), the nation's largest consumer advocacy organization. On behalf of CFA's 200 organizations and their 35 million members, I would like to thank the Chairman for this opportunity to testify on S. 2650, the Toy Safety Act of 1984. We want to offer our full support to this legislative effort; we hope to assist you in putting a bill on the President's desk during this session of Congress. If we can accomplish that task, the children of this nation will suffer fewer injuries and deaths from hazardous toys, and the parents of those children will be subject to less anxiety over their children's safety. In the long run, everyone will benefit, including toy manufacturers, because consumers with greater confidence in toy safety will be willing to buy more toys. As a consequence, we believe that toy manufacturers and their trade associations should join in support of S. 2650.

When the public is asked about the important tasks for government action, toy safety stands at the top of the answer list. The Lou Harris Survey, "Consummerism in the Eighties," provides strong evidence of this sentiment. Fully 88% of those surveyed felt that government should approve new toys before they are allowed on the market. Imagine the response to a question about removing unsafe toys from the market.

Given this paramount concern about effective regulation of toy safety, it is ironic that we have given regulators weaker enforcement tools in the toy safety area than in many others. It is this inequality that S. 2650 seeks to rectify.

We have no clue about the rationale—if any—for deeming hazardous toys less worthy of speedy corrective action than other dangerous products. Neither are we knowledgeable about or interested in the underlying history. What we know and do care about is the fact that it can be months, even years, longer for the Consumer Product Safety Comission (CPSC) to rid the market of hazardous toys and children's products. In the case of non-children's products, the Commission can proceed to recall hazards under its Section 15 authority. In the case of toys, however, the CPSC must first proceed through a lengthy rulemaking under Section 3(e) of the Federal Hazardous Substances Act (FHSA), or through a "transferring action" under Section 30(d) of the Consumer Product Safety Act (CPSA), before resorting to Section 15. The former procedure will take one to two years, absent legal challenges. The latter Section 30(d) action takes several months at minimum. Moreover, the vitality of 30(d) actions has been called into question by the Fifth Circuit Court of Appeals' decision overturning the CPSC's ban on formaldehyde insulation. What we are left with is a problem—toys that kill or injure—that can strike at any moment, coupled with a "solution" that moves with the speed of summertime in Washington in the days before air conditioning. It is a tragedy waiting to happen.

CPSC case histories suggest that it is a tragedy that has happened. Let me give two examples. The first involves suffocation deaths caused by the ends of certain squeeze toys, which the Commission learned about on 1981 and 1982. Out of twenty-one affected manufacturers, two firms refused to agree to voluntary recall procedures, forcing the CPSC to undertake a 30(d) action. The final 30(d) rule was not issued until January 1984. Shortly before that rule became final—which would have triggered the Commission's authority to order a recall—the two holdout firms agreed to take corrective action.

Second, in October and November of 1979, the CPSC staff received reports of strangulation deaths associated with certain stuffed toys. The Commission negotiated a corrective plan with the manufacturer approximately two months later, but the company balked at additional action the CPSC sought in April 1980. It took the Commission until June 1982 to pursue 30(d) procedures and authorize a complaint against the company; faced with that complaint, the manufacturer agreed to a voluntary plan.

There are other examples, but these two illustrate the main reasons that S. 2650 is necessary and necessary right now. First, the failure to enact legislation is the failure to prevent preventable injuries and deaths. The delays of months and years forced upon the CPSC by its inadequate procedures inevitably will keep certain dangerous toys on the market long enough to cause unnecessary accidents.

Second, it is not the safety-conscious toy manufacturers that would be harmed by the enactment of S. 2650. Such firms agree to voluntary recall plans as soon as they learn about the hazards created by their toys. It is the recalcitrant toy companies that S. 2650 will affect. But, if this legislation passes, no firm will be able to gain a small advantage over its competition through procedural delay, as is the case today.

Third, the toy safety procedures problem illustrates that the CPSC needs strong mandatory powers to enable it to maximize voluntary government/industry cooperation and to minimize command-and-control regulation. The weakness of the Commission's power in the toy safety area does not create less regulation. Instead, it only serves to draw out the regulatory process to the advantage of the least public-spirited industry members. In contrast, the stronger procedures accorded the CPSC by S. 2650 would shorten the regulatory process and reward firms that put safety first by increasing the Commission's leverage to bargain with firms tempted to elevate profits above the needs of public safety.

CFA believes the record is clear. Hazardous toys must receive equal treatment under the CPSC's governing statutes. S. 2650 provides that equality by making what should be considered a series of simple conforming amendments. We urge this Subcommittee to act favorably on this bill as soon as possible. Our nurseries and our playgrounds will be safer for the effort.

Consumer Federation of America would again like to thank the Subcommittee and its Chairman for this opportunity to testify. We stand ready to assist you in any way we can.

Senator KASTEN. David, thank you very much for your testimony and for your support on behalf of your consumer organizations across this country.

Our next witness is Mr. Mark Silbergeld, who is with the Consumers Union. Mr. Silbergeld.

Mr. SILBERGELD. Thank you, Mr. Chairman. We also appreciate the opportunity to appear in support of this bill.

The procedures under the Federal Hazardous Substances Act are too cumbersome to deal with a dangerous toy on the market, and the transfer procedures which permit the Commission to deal with the product under the Consumer Product Safety Act, for whatever reason, take too long. And in the meanwhile, of course, hundreds of thousands of children may remain at risk from a popular and widely distributed product that presents a risk of injury or death.

So we believe that this bill should pass promptly and we will do everything we can to help you move it along. We also believe that the same improvements in the transfer process should apply to other products that are subject to the Federal Hazardous Substances Act and that the judicial review process should be improved by taking initial judicial review out of the Federal district courts.

But we are not tying those improvements to this bill, because we understand the importance of moving this bill promptly through both Houses and onto the President's desk.

I am going to ask my colleague, Michelle Meier, who is the senior litigator in our office, to describe briefly some of the procedural reasons why the law as it presently stands does not work and what we think should be done about judicial review.

Senator KASTEN. Michelle Meier.

Mr. MEIER. Thank you very much. I too am very pleased to be here, Senator Kasten, and commend you for introducing this important piece of consumer legislation. I think it is important to clarify exactly what type of situation we are dealing with when a recall is in order.

We are not dealing with products that are presently still in the warehouse of the manufacturer. Rather, a recall situation is relevant to the time when a product has already passed through the distribution stream and is in the hand of the consumer. At this point it is extremely important for rapid action.

The Commission needs the authority to either voluntarily or involuntarily move the manufacturer or distributor to warn the consumer of the hazard posed by the product or, if the hazard is severe enough, to have it recalled from the home of the consumer.

I think it is important to clarify, contrary to what the hearing today has implied so far, that not all products that are designed for adult use are subject to an effective recall procedure at this time. At this time only one of the CPSC's acts, the Consumer Product Safety Act, has an effective recall provision. This is section 15. Your bill, Senator Kasten, is modeled after section 15 of the CPSA.

The CPSA, it is true, governs adult products. Toys are separately handled under the Federal Hazardous Substances Act. However, the Federal Hazardous Substances Act also governs a vast variety of products that are intended for adult use.

Additionally, the CPSC regulates products under the Flammable Fabrics Act and the Poison Prevention Packaging Act. The latter two acts have no recall provision whatsoever. The adult products governed by the Federal Hazardous Substances Act at this point will only be subject to recall once those products have been banned pursuant to a formal regulatory proceeding, which is very time-consuming. In other words, a recall situation can arise and frequently does arise before a product has been subject to a banning regulation or standard setting.

A quick look at the Code of Federal Regulations reveals that under the Federal Hazardous Substances Act the Commission has promulgated few bans and few standards. Consequently, there are many products on the market presently that could be discovered in future years to cause substantial harm.

As you are well aware, products' toxicity problems frequently only are discovered after years of research. It is impossible for the Commission to anticipate every type of harm that the products within its jurisdiction might pose. Consequently, in cases like this rulemaking, standard setting, or banning is not possible nor appropriate. The recall authority is vital.

The recall authority is also relevant even where there has been a standard or a ban promulgated in connection with an adult product or any other product regulated by the Commission. This is not a problem under the Federal Hazardous Substances Act because a product that has already been banned is subject to recall.

But under the Flammable Fabrics Act and the Poison Prevention Packaging Act, a product that has already been banned or violates a particular standard under the FFA may have been illegally distributed into commerce. However, the Commission is not able to use its injunction authority nor its seizure authority to get to those products that are already in the hands of the consumer, in the consumer's home. Only a section 15 type recall provision will protect the consumer in this type of situation.

So we hope that the committee and you, Senator Kasten, will consider expanding the scope of the section 15 recall procedure for the situations in which standard setting is not appropriate and expeditious action is necessary.

Finally, again toward improving the speed of recall procedures, we encourage you to consider introducing legislation explicitly stating that any appeal from any Commission recall order is to go directly to the courts of appeal, rather than to the district court. Unless there is an explicit statutory provision to this effect, the appeal will begin in the district court and proceed to the court of appeals. Obviously, this makes for a very protracted proceeding and contradicts the purpose of the recall, which is expeditious removal of the product from the consumer's home.

Thank you very much, Senator Kasten.

[The statement follows:]

STATEMENT OF MARK SILBERGELD, DIRECTOR, WASHINGTON OFFICE, AND MICHELLE MEIER, COUNSEL FOR GOVERNMENT AFFAIRS, CONSUMERS UNION

Mr. Chairman and members of the Subcommittee, Consumers Union [1] appreciates this opportunity to tell you why we support S. 2650, which authorizes the Consumer Product Safety Commission (CPSC) to regulate children's toys under a procedure modeled after Section 15 of the Consumer Product Safety Act. The bill would enable the Commission to act speedily and efficiently to protect the public if a particular product to which its procedure applies creates a substantial risk of injury. It would make speed and efficiency possible when speed and efficiency are of paramount importance.

We also urge you to make the Section 15 procedure applicable to all products within the jurisdiction of the CPSC. The expedited notice and recall provision of S. 2650 only applies to children's toys or other articles intended for use by children. The CPSC should be given the power to invoke the Section 15 notice and recall procedure when any product within its regulatory control poses a risk of substantial injury. Further, the bill should explicitly limit judicial review of a notice and recall order to the circuit courts of appeal.

PROCEDURAL SCHEMES OF THE STATUTES UNDER WHICH THE CPSC OPERATES

The CPSC operates under four major statutes: the Federal Hazardous Substances Act (FHSA), the Flammable Fabrics Act (FFA), the Poison Prevention Packaging Act (PPPA), and the Consumer Product Safety Act (CPSA). At this time, only the CPSC and the FHSA have any notice and recall provision. The notice and recall provision of the CPSA, Section 15, is far superior to that of the FHSA for several reasons.

Section 15 allows the Commission to institute a notice and recall hearing if a product distributed in commerce "presents a substantial product hazard." 15 U.S.C. Section 2064 (c) and (d). The product need not violate a previously promulgated product standard to trigger the notice and recall section. Rather, under subsection 2064(a)(2), a "substantial product hazard" includes "a product defect which . . . creates a substantial risk of injury to the public."

Section 15 gives the Commission the flexibility needed to respond to varying quantities and qualities of product risk. For example, if the harm will only occur through particular foreseeable uses of the product, the Commission may invoke Section 15 to require the manufacturer to notify the distributors and purchasers of this defect so that such uses can be avoided. But, if the harm involves, for example, severe toxicity, the Commission can use its authority under Section 15 to order a full product recall.

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[1] Consumers Union is a nonprofit membership organization chartered in 1936 under the laws of the State of New York to provide information, education, and counsel about consumer goods and services and the management of the family income. Consumers Union's income is derived solely from the sale of Consumer Reports, its order publications, and films. Expenses of occasional public service efforts may be met, in part, by nonrestrictive, noncommercial grants and fees. In addition to reports on Consumers Union's own product testing, Consumer Reports, with approximately 2.5 million circulation, regularly carries articles on health, product safety, marketplace economics, and legislative, judicial, and regulatory actions which affect consumer welfare. Consumers Union's publications carry no advertising and receive no commercial support.

It is true that the FHSA also contains a notice and recall provision that is substantially similar to Section 15 of the CPSA. However, the FHSA provision explicitly applies only to products that have already been banned by the Commission. 15 U.S.C. Section 1274. Banning occurs only as the result of a lengthy rulemaking proceeding.

Theoretically, the Commission can temporarily classify a product as banned and then invoke the notice and recall section of this act pending the issuance of a formal banning regulation. In cases involving articles not intended for use by children, the product may be temporarily classified as banned if the Commission finds that the distribution for household use of the hazardous substance involved presents an imminent hazard to the public health and publishes such order in the Federal Register. 15 U.S.C. Section 1261(q)(2). Similarly, pending a hearing to ban a children's article, the Commission may treat the product as banned if it finds by order published in the Federal Register that "distribution of the toy or other article involved presents an imminent hazard to the public health." 15 U.S.C. 1262(e)(2)

The Section 15 notice and recall procedure and all other enforcement tools provided by the CPSA are not applicable to products regulated under the FHSA, FFA or PPPA unless the Commission follows Section 30(d) of the CPSA. Under Section 30(d), the Commission, by regulation, may apply the enforcement tools of the CPSA to any product within its jurisdiction if one of two conditions is met: (1) the risk of injury associated with a consumer product cannot be eliminated or reduced to a sufficient extent by action under the three alternative acts; or (2) it finds that it is "in the public interest" to regulate the risk of injury under the CPSA.

THE IMPORTANCE OF AN EFFECTIVE NOTICE AND RECALL PROVISION FOR ALL CONSUMER PRODUCTS AND THE INADEQUACIES OF THE PRESENT STATUTORY SCHEMES

Where a product is subject to an effective ban or standard, the penalty and injunctive provisions of the Commission's acts serve to deter its introduction into commerce. However, if these deterrence mechanisms fail, or if the ban or standard is issued after the product has already been marketed, only an effective notice and recall provision will enable the Commission systematically and expeditiously to protect the public from a substantial risk posed by the product. Although the FHSA contains a notice and recall provision that applies to banned products, the lack of any such provision in the FFA and PPPA is a serious deficiency.

Further, it is extrememly important that an efficient notice and recall provision be applicable to all products not subject to a previously promulgated ban or standard. A quick look at the Code of Federal Regulations reveals that the Commission has issued very few product bans, and its standards do not apply to all products within its regulatory authority. Consequenlty, many harmful products can be sold legally. They can then be removed from distribution under a notice and recall authority.

One reason the CPSC has engaged in little rulemaking is because rulemaking is very time consuming and controversial. More importantly, the Commission cannot always anticipate the harm that can be caused when a new product, or an old product with a new feature or a newly discovered harmful effect, is marketed. Consequently, the necessity for a prospective ban or standard will not always be evident until the harmful product has already been distributed. At that point, where the product poses a risk of substantial harm, a prospective standard and ban is less relevant than a procedure to notify the public of the harm and, if necessary, to remove the product from the marketplace and the home of the consumer. Obviously, speed is of the utmost importance.

The extreme usefulness of the Section 15 procedure is reflected by its popularity with the CPSC. A recent report prepared for the Administrative Conference of the United States [2] indicates that the CPSA notice and recall authority is the CPSC's most frequently used enforcement tool. the Commission has described the Section 15 procedure as an efficient and effective alternative to rulemaking.

The success of the Section 15 procedure is easily explained. The main objective to be achieved when a product that is already distributed poses a substantial risk of harm is speedy notice and, if necessary, recall. A manufacturer's willingness to cooperate with due speed in such a case can be severely undermined if it knows that the agency is powerless to act, or restricted in acting, in the absence of such cooperation. Because the CPSA notice and recall procedure is direct and relatively simple, it gives the Commission a strong bargaining tool when a quick voluntary public notification or recall by the manufacturer is in the best interest of the public.

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[2] Schwartz and Adler, *Product Recalls: A Remedy in Need of Repair* (December, 1983).

Even where industry cooperation is absent, Section 15, at least at the administrative level, promotes the vital speed and efficiency that is necessary in a recall situation. Its effectiveness ensures its use.

By contrast, the FHSA recall procedure is a statutory maze. It requires the Commission to address the merits of the case preliminarily to determine whether the product should be temporarily banned as an imminent hazard. This initial determination is then subject to judicial review. If an affirmative conclusion is ultimately reached on this issue, the Commission must then go through a second hearing to determine if a notice or recall order is appropriate. Even this procedure is only a preliminary one. After the Commission invokes the imminent hazard standard temporarily to treat the product as banned, the Commission must then institute a procedure to determine whether the product should be permanently banned.

The statutory labyrinth leading to the Commission's notice and recall power under the FHSA operates as a strong deterrent to its use. Since the FHSA notice and recall provision was amended in 1981,[3] the Commission has never invoked the imminent hazard clause temporarily to ban a harmful product before it was subject to a formal regulatory ban. The Commission has never taken the further step of ordering public notice or recall of such a product. Given this involuntary enforcement record, it follows that the Commission has little leverage to induce voluntary recalls of products subject to FHSA regulation.

Not only is the FHSA procedure cumbersome, but it involves an extremely high standard of harm, i.e., "imminent hazard" to the public health, that is more appropriate to an absolute banning procedure rather than a notice and recall procedure. Because the Commission has never invoked the provision under the FHSA, it is impossible to state how it would be interpreted by the agency or the courts. But, on its face, the standard is much higher than the "substantial risk of injury to the public" test of Section 15 of the CPSA. This, too, has probably contributed to the failure of the Commission to utilize the indirect recall provisions of the FHSA.

The indirect recall provisions of the FHSA are particularly inadequate for FHSA products not intended for use by children because the rulemaking procedure required for these products is particuarly formal and time consuming. As a result, the Commission has indicated a decided dislike for rulemaking in connection with these products. Because rulemaking is a mandatory step involved in a notice and recall for temporarily banned products, it is likely that the Commission will continue to avoid the notice and recall procedure under a temporary ban.

The Commission's treatment of the toxic Urea Formaldehyde Foam Insulation (UFFI) illustrates the agency's aversion to the elaborate regulatory hurdles set forth in the FHSA. UFFI falls under the FHSA. However, rather than utilize the FHSA banning procedures to regulate this product, the Commission attempted to ban it under the CPSA by first invoking Section 30(d) of the latter act. The Commission clearly stated that its purpose in invoking Section 30(d) was to avoid "the complex and lengthy nature of the rulemaking proceeding that could be required under the FHSA . . ." 47 F.R. 14369. Although the 5th Circuit invalidated the Commission's attempt to avoid the maze posed by the FHSA,[4] the case demonstrates the uselessness of a statutory procedure that is shunned even by the only agency responsible for its enforcement.

Finally, the Section 30(d) transfer provision is wholly inadequate to remedy the deficiencies of the FFA, FHSA and PPPA. By requiring the Commission to transfer the regulation of a risk of injury from one act to the CPSA only after a time-consuming rulemaking hearing, Section 30(d) precludes the necessary speed of a notice and recall procedure.

Further, Section 30(d) confusingly refers to the transfer of the regulation of "a risk of injury." Arguably, the Commission might interpret this Section to authorize it to transfer to regulation under Section 15 any product creating a substantial risk of injury within the meaning of that section. In fact, however, the Commission appears to have interpreted Section 30(d) much more narrowly by making transfers under the section on a product-by-product basis. It is unclear whether the Commission's limited use of Section 30(d) is a choice it has made on the basis of statutory construction or policy. But, until Section 30(d) is broadened through clarifying legislation or the Commission changes its narrow interpretation or policy, this transfer authority fails to provide a means for effective notice and recall of all products posing a substantial risk of harm.

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[3] To our knowledge, the Commission has only invoked the imminent hazard clause once. This was in 1974, when the notice and recall provision was substantially different.

[4] See *Gulf South Insulation, et al. v. United States Consumer Product Safety Commission*, 701 F.2d 1137 (5th Cir. 1983).

RECOMMENDATIONS: BROADEN THE SCOPE OF S. 2650 AND ADD A JUDICIAL REVIEW PROVISION

Consumers Union strongly urges the Committee to extend the CPSA notice and recall provision to all products regulated under the Commission's three other statutes. The main virtue of the Section 15 authority, a speedy procedure to notify the public of a product risk and to remove the risk where appropriate, is vitally important regardless of the type of product involved. Substantial harm is substantial harm. Effective consumer protection should not depend on which of the Commission's several statutes governs the product posing the harm.

Consumers Union is supported by others in its recommendation to extend the applicability of the Section 15 procedure. The report prepared for the Administrative Conference of the United States concludes that the CPSC should have specific authority to seek notice and recall actions under the FHSA, FFA and PPPA through a procedure like that of Section 15 of the CPSA. The Conference's Committee on Governmental Processes, following public notice and comment, has also endorsed this proposal.

Consumers Union additionally recommends that the bill be amended to include a judicial review provision governing the appeal of notice and recall orders. Presently, neither the FHSA nor the CPSA contains an explicit review provision. Consequently, the Administrative Procedure Act would apply, permitting two levels of review in both the federal district court and the court of appeals.

Most agency action is only subject to direct review in the courts of appeal. In Section 15 notice and recall situations, two levels of judicial review is totally unnecessary because a full administrative hearing is conducted by the agency before any notice or recall order is issued. The procedure can only delay the eventual notice or recall, thereby counteracting their effectiveness for consumer protection purposes.

In concusion, Consumers Union appreciates the efforts of the sponsor of S. 2650 to provide faster protection of children from injury through expedited procedures. We believe that other consumer products that pose a substantial risk to the public should also be subject to the Section 15 notice and recall procedure. In order to further expedite this process, only the usual circuit court appeal should be available to a party subject to a notice or recall order. A simple legislative amendment would achieve these results.

Senator KASTEN. Michelle, thank you very much.

Mark, earlier today—or David also, but why do you not start, Mark. Earlier today Terry Scanlon expressed the view about the allocation of—well, and Aaron Locker also—the allocation of resources and activities between recalls and rulemaking.

Do you want to just briefly comment, both of you, on whether this rulemaking process as we worked it through in the 1981 bill is in fact working, or are they responding—are they relying too much on just flat-out recalls? What is your evaluation of that issue?

Mr. SILBERGELD. Well, the 1981 amendments, quite frankly, Senator, made it much more difficult to develop a product standard. It asked the Commission first to look at voluntary standards. It prohibits them from setting a rule where there is an "adequate" voluntary standard in effect. It leaves open the question of what happens when a voluntary standard is in the works.

It does to some extent encourage the Commission to proceed to determine questions of what is—what presents—a substantial risk of injury by recall, because it makes rulemaking more difficult. But that is no reason for the Commission's not recalling something that in fact meets the statutory standard if it is on the market and does present that risk.

I understand Commissioner Scanlon's point. I agree that the Commission, where it has the option of taking a look at a product that is a persistent injury problem in the marketplace and setting a standard for it, then the Commission should not sit back and deliberately say, "What we are going to do, since we do not want to engage in rulemaking, is simply recall products every time we find this problem occurring in the marketplace. And we know that will happen over and over again."

They should proceed down the road to rulemaking. But it also has to reach the conclusion that rulemaking is possible under the very difficult 1981 amendments; and also at the same time continue to recall those products that present that problem while the rulemaking is in process.

I would be very happy to see the Commission start rulemaking proceedings involving, let us say, the three most frequently recalled categories of product or for specific most common defects for which those products are most frequently recalled, assuming that of course in particular someone can identify a potential remedy for the particular defects; that is, a performance standard is feasible, or if not then a design standard is feasible.

I do not see the Commission doing that, and it is no alternative to the Commission's doing that if indeed it intends to focus on rulemaking prospectively in order to cut down on the number of recalls by making rules that tell manufacturers how safe a product has to be.

I do not have any objection to rulemaking, but it is no answer, in the absence of the Commission's undertaking rulemaking, to say, "Well, we should not use these recalls and the recall process when we find the product in the marketplace presenting risks the statute does not allow."

Senator **Kasten**. David, would you like to comment briefly on this question?

Mr. **Greenberg**. I basically share Mark's view and his comments. Rulemaking is forward-looking. Recall authority is backward-looking and immediate. I think they are different processes. They both have their appropriate roles.

It seems to me also that if you look at the broad sweep of agency work, both CPSC and other independent bodies, you see that rulemaking tends to have—tends to elicit a different response from industry members during different political times, during different times of leadership of the respective bodies.

So I am not sure that we are arguing as much about the regulatory process as we are who is in control of it and what they are doing.

Senator **Kasten**. I thank you very much. I appreciate your testimony, as well as the point that Mr. Locker and Mr. Scanlon raised. I think as we work in the oversight of the Consumer Product Safety Commission we ought to take into consideration some of the comments, Michelle, that you make in terms of expediting this process, but also look at this rulemaking versus recall.

It is almost a paradox that the efforts that were made in 1981 could be leading in fact to more recalls, when in fact what we were trying to do in 1981 was to develop a rulemaking process that would be easier to work through, therefore prevent the kinds of drastic adversary proceedings like recalls.

But we will work, we will continue to work through this. We appreciate very much the testimony of the three of you and also thank you for your support. Maybe we ought to make a grabbag or something like that and everybody put the title of this bill into it and we will pick one out and we will decide what we really want to name it.

But we will see. And I am hopeful that we will be able to act on this legislation as early as next week, Tuesday, if we are able to stay on schedule.

I thank you very much and I thank all of the witnesses today. I think this has been a very worthwhile hearing.

The committee is adjourned.

[Whereupon, at 11:55 a.m., the subcommittee was adjourned.]

TOY SAFETY ACT

MONDAY, JULY 2, 1984

U.S. Senate,
Committee on Commerce, Science, and Transportation,
Subcommittee on the Consumer,
Milwaukee, WI.

The committee met, pursuant to notice, at 9:10 a.m., at the Teaching Center, 4854 South 27th Street, Hon. Bob Kasten (chairman of the subcommittee) presiding.

OPENING STATEMENT BY SENATOR KASTEN

Senator **Kasten**. The hearing will come to order. I'm pleased to open today's hearing on my legislation which would expedite the recall of unsafe toys or other articles intended for use by children. Under current law the Consumer Product Safety Commission may order the recall of those products only after engaging in a long and a cumbersome procedure that in some cases can take years to complete. We've got examples here today to prove it.

Basically because of a legislative quirk, it's often easier for the Consumer Product Safety Commission to recall products intended for adult use that present substantial risk of injury than it is for the agency to recall hazardous toys and other children's articles. It doesn't seem to make sense, but the fact is that today it's easier in the United States of America to recall a toaster or an iron or any product that is used by adults than it is to recall a simple children's toy like this one which has in fact contributed to injury and death.

We've got, this morning, a number of other examples of toys and children's products that have in fact been shown to be dangerous. Yet we have been unable to get them off the market in an expeditious manner. There's absolutely no reason in my opinion why it should take longer to recall children's toys and articles than it does to recall other consumer products. In fact, it's the children's products that ought to be removed from the marketplace first because children are particularly vulnerable and are often unable to protect themselves. Toys and children's articles that present a substantial risk of injury should be removed from the marketplace as quickly as possible.

The legislation before us, S. 2650, the Toy Safety Act, would amend the Federal Hazardous Substances Act to allow the Consumer Product Safety Commission to order the immediate recall of toys and children's articles that contain a defect which creates a substantial risk of injury. The Consumer Product Safety Commission will no longer be required to issue a final rule banning a hazardous toy or article before it may begin a recall procedure. Nor will the Consumer Product Safety Commission be required to complete a rulemaking to transfer its regulatory functions from one act to another.

These procedures, both the transfer and the rulemaking procedures, are lengthy, unduly cumbersome and serve to unnecessarily delay the removal of unsafe toys and other children's articles from the market. With this legislation the consumers' interest will be better protected and the children's environment will be better served.

First of all, I'd like to welcome all of you here today and particularly to welcome the witnesses who will be offering a variety of perspectives on the subject of children's safety. We're going to be hearing from representatives of the Wisconsin State Legislature, the Consumer Federation of America, the Concerned Consumers League, the Wisconsin Manufacturing Association, and WITI Channel 6. We'll also be hearing from Zayre Corp., Milwaukee Day Care Center, a speech pathologist, and from the American Academy of Pediatrics and the Milwaukee Children's Hospital.

We're particularly pleased to have with us today the Chairman of the Consumer Product Safety Commission, Nancy Steorts, who has been kind enough to come from Washington, DC, to discuss the Consumer Product Safety Commission's activities in the area of children's safety and also to present their views on this legislation.

Nancy, we'll begin with you.

We'd like to present Nancy Harvey Steorts, Chairman of the Consumer Product Safety Commission, Washington, DC.

STATEMENT OF HON. NANCY HARVEY STEORTS, CHAIRMAN, CONSUMER PRODUCT SAFETY COMMISSION

Ms. STEORTS. Thank you very much, Senator Kasten. It's my pleasure to be here in Milwaukee, and I'm particularly pleased to be here with you. I think that this move on your part to enact a Toy Safety Act in 1984 is commendable, and I appreciate it.

First I'd like to take this opportunity to commend Senator Kasten for having the foresight to introduce the Toy Safety Act of 1984. I believe that it shows a sensitivity to the needs of the American consumer.

This bill will hopefully correct a legislative quirk that has for 10 years hampered the ability of the Consumer Product Safety Commission to work expeditiously to protect the consumers of America, most particularly the children of the consumers of America.

Second, I would like to call attention to what I believe to be the most important aspect of this bill; namely, the time factor. This bill will allow the Commission to move swiftly. This swiftness is best understood in comparative terms. It has been pointed out that it is often easier for the Consumer Product Safety Commission to recall products intended for adult use than to recall hazardous toys and children's articles due to the weaknesses of the Federal Hazardous Substances Act.

Let us look again at the example of squeeze toys. Although most manufacturers were cooperative, two firms were not. This meant that it took from 1981 to 1984 for the American marketplace to be free of a substantial product hazard.

In contrast, manufacturers are often far more willing to take prompt corrective action for an adult product because they know that the Commission does not need to go through the protracted 30(d) proceedings, but instead can rapidly issue an administrative complaint to compel a recall or other appropriate corrective action.

A case in point is the Commission's recent voluntary recall on an electric space heater. This heater had been involved in six fires, including one in which an 18-month-old baby perished. The Consumer Product Safety Commission contacted the manufacturer about this problem in February of 1984 and a recall was announced in April of 1984. This means that it took only 2 months to get the adult product off the market while it took 2 years to do the same with a child's toy.

I am pleased that in the future the chances for such an intolerable and unconscionable delay will now be eliminated.

Third and lastly, while we're talking about the safety of children's products, I would also emphasize my belief that much more needs to be done in age labeling. Age labeling is a key way that industry can help make toys safer for the individual child. I would like to see on every toy, particularly on those intended for children 6 years of age and under, appropriate age recommendations and an explanation of the safety reasons behind the recommendation. In other words, once again, better information for the consumer.

I am confident that the combination of better age labeling for toys and the ability to recall these hazardous children's products quickly will go far in reducing the tragic toll of toy related injuries. Although toys are safer on the whole, in 1982 there were still 123,000 injuries, and this figure is simply too high.

Thank you very much, Senator Kasten, for the work you have done to bring to fruition the Toy Safety Act of 1984.

Senator KASTEN. Nancy, we thank you very much. Let me, first of all, ask are you speaking on your personal behalf or are you also speaking on behalf of the administration when you voice your support of our legislation?

Ms. STEORTS. I am speaking on behalf of the Consumer Product Safety Commission and I'm also speaking on my personal behalf. The Consumer Product Safety Commission supports this legislation, and I was also very pleased to be at your hearing in Washington, Senator Kasten, when Virginia Knauer's deputy, Bob Steaves, spoke and I was very pleased to see that you had the support of Virginia Knauer, Special Assistant to the President and Director of the Office of Consumer Affairs. We feel that this is outstanding legislation and the Consumer Product Safety Commission extols that.

Senator KASTEN. Nancy, I know that you have been active in promoting children's safety and have been working closely with the industry trying to develop a working relationship rather than an adversarial one. Could you briefly describe a couple of the kinds of things that you've been doing?

Ms. STEORTS. Yes; first let me give you an example of a company that had a problem and rectified it immediately, and I'd like to refer to the recent recall of that little playmobile person of McDonald's.

One consumer in Rochester, NY, reported to us that she felt that a small playmobile promotional toy did not meet our tests for a small part for children under 3. She called the Consumer Product Safety Commission. Our investigators took a look at it. We were in contact with McDonald's immediately.

McDonald's called me at home, personally, 2 days later and said whatever the problem was that they would correct it. They said they did not need a product safety problem. McDonald's voluntarily recalled within about 4 days 30 million of those little toys. That is the epitome of corporate responsibility.

A second example I would like to relate to you is the wonderful cooperation we've had from the Toy Manufacturers of America. Since I have been chairman, we have joined in a cooperative effort with them at holiday safety time talking about how to buy safe toys, and they have been very cooperative. I think that now through this legislation we will find that the toy manufacturers will cooperate with us even more, including a few of the companies that have not been as cooperative as they should have been.

Senator KASTEN. I might say at this point that the reason we're having these hearings here in Wisconsin is in order to increase public awareness and also frankly to get as much support behind this legislation as we can. I believe it's very important that we enact this legislation before we get into the next Christmas buying season. That means we've got to pass it in the House and Senate in the period we've got left in early August, before we go back for the Republican Convention in Dallas.

That will allow President Reagan time to sign the legislation into law and give the Consumer Product Safety Commission, and other people in the administration working on this issue a chance to complete their tasks before the Christmas season. At that time, we'll be ready to go forward.

I'd also like at this time to just say what we will do here today. Chairman Steorts and I will show several examples of why this legislation is necessary and demonstrate for you the problems that we've got. We have had deaths and injury occur with literally every one of the products you see before you. We'll just go through now and explain very quickly to all of you what some of the problems have been.

Before we do that, I'd like to thank the people at the Teaching Center here who have been good enough to allow us to use their facilities. A special thanks should go to Jo Ellyn Kuhs, but the whole group has been wonderful. We thank them very, very much. We're particularly pleased to be here at the Teaching Center because they have such a terrific facility. We saw a group of children on their way out for a field trip just before we got here, and there are also some children here with us today.

Nancy, why don't we start with this example right here, and we'll just demonstrate one or two.

Ms. STEORTS. Senator Kasten, I'd also like to say that I do have the official statement of the Consumer Product Safety Commission which is available. But I thought in the essence of time I would not read it.

Senator **Kasten**. This is a mesh-sided playpen, and it's meant to be used like this. What happens is that as Nancy just demonstrated, people sometimes let the side drop.

They get it locked like it was just locked, but unfortunately they don't leave it locked, and the thing drops. The child then falls into this area and is sufficated. We have seen 11 deaths due to this mesh-sided playpen, but recall proceedings have already taken 1½ years and this issue is still in litigation.

Ms. **Freese**. Who is the maker?

Senator **Kasten**. I've got that information in another place. I'm sorry.

Ms. **Steorts**. There are many different makers of these.

Senator **Kasten**. Here is another example. This is a headboard for a crib, and as you can see the crib was made so that it is possible for children to fall and to get caught or strangled. In this example, there were seven deaths prior to the initial recall, two in 1983. Once more, it took a long time for us to get this off the market because of the way the current law reads.

We talked before about these different kinds of squeeze toys. We've had four deaths and five injuries from squeeze toys of this kind. Yet, it's taken a period of 1 year or 1½ year to begin the recall.

This is an example of a good squeeze toy because it can't be swallowed. It's fat enough and big enough so that a child can't get this into its mouth. This is the kind of change that we're trying to work toward.

The last example that we can just briefly show you has to do with crib hardware. I'll let you demonstrate that, Nancy.

Ms. **Steorts**. This is the one we have had the most difficulty with. With crib hardware, people assume a crib is going to be all right. The screws, the bolts, the brackets, one assumes that those are all going to be tight and that a crib is a safe haven for a child, but many times it is not. If you take a child who is sleeping in a crib like this and one of these brackets over here should disengage, like this, that child while sleeping in the night, when the child moves can literally fall right through these cracks. We have had several deaths from just such an incident.

We have had an absolutely terrible time with the manufacturers to get them to understand that this problem must be corrected. So what we had to do was go through the cumbersome process of transferring jurisdiction over the risk of injury from the Hazardous Substances Act to the Consumer Product Safety Act which took just an unbelievable amount of time, Senator Kasten.

Your legislation now will correct this so that we would be able to do an automatic recall of this product so that we wouldn't have to go through this tremendous amount of time transferring from one act to another which is confusing to the consumer and absolutely does nothing for the safety of the child. So we really thank you for this legislation and we hope it gets enacted very quickly.

Senator **Kasten**. Thank you.

I'd like to say just one more thing before we go on to the first panel. In this last example, there have been 46 Consumer Product Safety Commission indepth investigations of this crib since 1980. Nineteen children have died. I think that what we're suggesting here is that we've got an opportunity to make a real difference if we can improve the recall system.

[The statement follows:]

Statement of Hon. Nancy Harvey Steorts, Chairman, Consumer Product Safety Commission

Mr. Chairman, it is indeed a pleasure for the Consumer Product Safety Commission to appear before you today to discuss S. 2650, the Toy Safety Act of 1984, and to review with you the legislative twist that the bill is designed to remedy.

Quite simply, children do not today have the same protection, under the law, against products intended for them and found to be hazardous, as adults have against most other unsafe products. Ironically, toys and children's products were accorded a special status by being regulated first as a risk covered in the Federal Hazardous Substances Act (FHSA) before this agency was created. But, they now are subject to a more cumbersome, impractical recall process because they are covered by an Act which does not have a comprehensive recall provision. Today, because of this second-class status for toys and children's products, it is easier for CPSC to recall products intended for adults and which present substantial risks of injury, than it is to recall hazardous toys that are unregulated.

Mr. Chairman, the bills which you and Congressman Waxman announced May 9, and the Senate version which you have before you today, would rectify that imbalance of protection.

Under current terms of the Federal Hazardous Substances Act, the only provision for recall of a toy or children's product is after the product becomes a "banned hazardous substance." Generally, this requires the agency to publish a rule banning or regulating the product unless the Commission takes the unusual step of first declaring the product an imminent hazard, at which time the recall remedy is then available. The rulemaking process often requires two or three years. The most expeditious process available now for recalling an unsafe toy or children's product that is not covered by an existing FHSA regulation, or is not an imminent hazard, is by transferring regulation of the risk of injury under section 30(d) of the Consumer Product Safety Act (CPSA). This regulatory transfer from FHSA to CPSA is after notice and public comment and a finding that it is in the public interest to do so. However, this process usually requires at least six months to complete, after which a recall proceeding under section 15 of the CPSA can be started. In the meantime, a toy or children's product considered to be hazardous could remain in the marketplace. Yet, the recall of most products intended for use by adults does not require this lengthy transfer procedure.

Fortunately, Mr. Chairman, our negotiations with some industries have met with cooperation and quick response when evidence of substantial risks of injury from their products is at hand. Some have been more difficult to persuade. Some have used our procedural process to delay as long as possible the recall of a hazardous product.

A few examples of recalls under various circumstances are as follows:

(1) Stuffed Toys With Strings—In October and November 1979, the staff received reports of two strangulation deaths associated with the products. The firm was contacted and a corrective action plan was negotiated during December 1979 and January 1980. However, the recall effectiveness, especially among consumers, was very low, so in April-May 1980, additional corrective action was requested. The company refused. In June 1980, the staff recommended a section 30(d) proposal, which was published November 17, 1980. In order to conform the 30(d) rule to the statute, as amended in August 1981, and in order to include additional products with the same risks of injury, the 30(d) rule was reproposed December 4, 1981, and a final 30(d) rule was published March 17, 1982. On April 29, 1982, the staff forwarded a briefing package to the Commission with a complaint recommendation. The Commission, on June 16, 1982, authorized the issuance of a complaint. At that point, the company agreed to the corrective action recommendation and the Commission approved their response June 24, 1982.

(2) Squeeze Toys—In 1981 and 1982, our staff learned of two suffocation deaths involving squeeze toys that had handles with bulbous ends. The importer of the toys involved agreed to recall them. We collected and examined 130 squeeze toys from several manufacturers, among which 21 were identified as being substantially hazardous. Most of the firms are currently conducting voluntary recalls in cooperation with the Commission, but two firms refused to recall their products. A proposed 30(d) rule was published January 3, 1983, and a final rule was published January 5,

1984. Shortly before the rule became final, both firms agreed to undertake corrective action.

(3) Mesh-Sided Cribs and Playpens—After learning of the deaths of 11 young children in mesh-sided cribs and playpens when the sides had been left down, CPSC issued a complaint in the fall of 1983 against all manufacturers of these items seeking extensive public notice and a recall under section 15 of the CPSA. Seven of the deaths occurred between 1981 and 1983. This matter is currently in litigation, with the manufacturers contesting the staff's position that it was in the public interest to recall and provide extensive public notice of the hazard involved. Trial is set for August 1984. The 30(d) rule was proposed in this case March 3, 1983, and issued in final form July 27, 1983.

(4) Enclosures—Between 1980 and 1982, the staff received three reports of deaths and one report of brain damage caused by neck entrapment in enclosures—expandable cylindrical wooden enclosures intended to confine children. On June 15, 1983, the Commission published a proposed rule under section 30(d). A final 30(d) rule was published March 5, 1984. The staff has indicated that it may be necessary to seek compulsory corrective action under section 15 of the CPSA.

(5) Crib Headboards—Two models of cribs manufactured by one firm were involved in seven deaths. The firm agreed to recall the cribs and an etensive notification effort was conducted between 1978–80. After learning of two deaths during 1983, the firm agreed to another effort to notify the public about the hazard and the recall. If it had been necessary to go through the 30(d) procedures, the time to initiate both corrective actions by the firm and to notify the public would have been increased substantially.

(6) Indoor Gym Houses—This case is similar to the crib headboard case in that the firm agreed to a second recall and notification effort. Two deaths led to the initial recall in 1980. The second effort was the result of a third death in 1982. These corrective actions and public notification efforts would have been substantially delayed if it had been necessary to follow the 30(d) procedures. In other words, if the industry had not been cooperative, our hands would have been tied for several months.

The Toy Safety Act of 1984, if passed, would expedite the corrective action on all such cases, except those where the industry involved responds readily and quickly. The bill would allow CPSC to use the same procedures to recall a hazardous toy that now can be used to recall other hazardous consumer products.

The procedure for recalling most consumer products, as you know, is relatively simple. Under authority of section 15 of CPSA, the Commission may, after a public hearing, require the recall of consumer products that either (1) fail to comply with a consumer product safety rule, and so create a substantial risk of injury to the public, or (2) contain a defect which creates a substantial risk of injury to the public. The section 15 recall authority had been one of our most effective tools in providing protection from substantial risks of injury in the marketplace. Regulations and standards, both voluntary and Commission mandated, are effective for subsequent production. But a recall or corrective action program is often the only effective way to reach those defecting products already in circulation or in the possession of consumers.

In reviewing some of the legislative background which left toys and children's products outside of the normal realm of the CPSA, it seems that this was an unintended oversight brought on by an earlier effort to give special protection for toys. The effect has been a cumbersome system which can take months—and, in some cases, years—to recall a hazardous product destined for use by children.

Mr. Chairman, no consumer is more vulnerable to the hazards of product defects than children. The Consumer Product Safety Commission has long recognized this vulnerability and has had a deep interest in the special field of toy safety. For example, during the last three years, this agency has had a Holiday Toy Safety program before Christmas to promote safe buying practices and to caution adults about potential hazards in the children's market. This program has been held in cooperation with the Toy Manufacturers of America and has been very successful in reaching the buying public at a time when many toys are selected for children.

Age labeling on toys is a very important way that manufacturers can make toys safer for children. A number of manufacturers and importers are already providing appropriate age labeling for their toys, particularly those intended for children six years old and under. The Commission hopes that toy manufacturers and importers will join in providing this important information to prevent unnecessary accidents.

Regardless of such worthy programs, however, problems do sometimes arise in children's products. When we at CPSC learn of accidents from these products, it is our job to investigate and, when necessary, to act. A major difficulty we have faced in some situations involving toys and children's products has been the complex and cumbersome process for effecting recalls or corrective action.

Delays in such matters hardly seem justified, especially when considering the type of consumers who are at risk. It is a source of great satisfaction to this Commission that the issue of toy safety is one which enjoys broad public support. This legislation should go far in enhancing one of the effective CPSC tools used in our toy safety responsibilities and should permit us to utilize more effectively our legal resources currently employed in these 30(d) proceedings.

We support the legislation proposed by you and Congressman Waxman.

Thank you, Mr. Chairman, and we will be pleased to respond to any questions.

Senator KASTEN. Now, I'd like to proceed to our hearing. It's organized into three panels this morning, and what I'd like now is to ask all the members of panel, No. 1, to come forward together: Al Luzi, Nancy Grundle, Patricia Rouleau, and Camille Haney.

We will begin. I'd like to ask that you please keep your statements to roughly 5 minutes or a little bit less. However, your entire statement will become a part of the official hearing record. We'll try to move through the whole panel and just address one or two questions to the panel as a group.

First is Mr. Al Luzi, who is the former president of the Consumer Federation of America, and past executive director of the Concerned Consumers League, Milwaukee, WI.

Mr. Al Luzi.

STATEMENT OF ALDEN L. LUZI, FORMER EXECUTIVE DIRECTOR, CONCERNED CONSUMERS LEAGUE

Mr. LUZI. Thank you. Good morning, Mr. Chairman, and thank you for the opportunity to appear before you and the subcommittee. My name as you said is Al Luzi. I'm the past president of Consumer Federation of America and past executive director of the Concerned Consumers League. I'm here appearing today on behalf of the league in support of S. 2650 and to suggest amendments to the current bill.

During the past several years both the league and CFA have enjoyed good working relationships with the Commission. CFA has worked closely with the Commission in regard to the setting of various standards, the provision of community based programming, and as well as advocating for the reauthorization of the Commission's budgets.

The league, which is a CFA State and local member, has also concentrated on the above-cited issues as well as earning a deserved reputation in the area of product safety. Both the Waukesha Safety Commission and the Consumer Product Safety Commission have given the league commendations for our work.

The league also has provided direct community base service in conjunction with the Commission through toy safety workshops and prescription cap closure surveys.

Currently the league is coordinating the passenger restraint network project. The project is comprised of over 60 hospital, clinics, consumers, and governmental units concerned with the safety and seatbelt issues.

We would also like to commend the Commission on the recent position of not allowing the export of banned or hazardous products from the United States. Thanks to your efforts "made in America" will continue to mean the best in product qualities.

With respect to S. 2650, the act seeks revisions in the Federal Hazardous Substances Act which will allow the Consumer Product Safety Commission to expedite the recall of dangerous toys and other articles intended for use by children.

Currently, as you know, the Commission can recall toys and other articles in the following two ways. First, under the Hazardous Substances Act, the Commission must finalize a rule banning the toy or the article. This can take, as has already been pointed out, 2 to 3 years.

Second, the Commission could transfer its regulatory function of recalling products from the FHSA to Consumer Product Safety Commission Act. This process may take anywhere from 4 to 11 months. In both instances the toy or the article will remain on the market during the period cited above.

If the bill is passed, the Toy Safety Act will eliminate the long delays in the FHSA recall product process and provide a framework for the actual recall of toys or hazardous articles by the Commission. The act appears to be well written and needed in order to assist the Commission in protecting our Nation's children.

Both the league and the Consumer Federation of America will be working with you, Senator Kasten, in support of S. 2650, which we hope would become law by mid-August.

With regard to suggested changes in S. 2650, three of our suggested changes are in language only that we believe does not change the intent of the bill. Under the act ample opportunity is provided by the Commission for voluntary compliance, and we believe that that probably is the best place to start.

In relationship to the draft that I have, and this is the staff working draft dated June 13, 1984, our first suggested change in verbage is on page 3, line 16, and it just merely involves changing the word "may" to "will" after the comma. The Commission will order the manufacturer, distributor or dealer to take whichever of the following actions the person to whom the order is directed elects, and then the listing of the orders.

The second change would occur on page 4, line 9, once again eliminating the word "may," inserting the word "would." Reading the line as it starts, "An order under this paragraph would also require the person to whom it applies to submit a plan," and then on.

The second change on that page, page 4, line 18, would also simply involve the deletion of the word "may" and the insertion of "would." The sentence beginning, "An order under this paragraph would prohibit the person to whom it applies from manufacturing for sale." Again basically the suggestions there would just simply tighten up the verbage to encourage voluntary compliance.

Our next suggested change is in addition to the act and would address the potential issue of the export of a product within the act's authority. Along with prohibiting the import of toys or articles into the United States and U.S. custom territories, the export of such articles should be disallowed also.

This change could be easily accomplished by adding the language, and now we're talking the bottom of page 4 on that draft, adding to line 25 after the period "this shall also apply to the export of the toy or article for foreign consumption outside of the continental United States or U.S. customs territories." This we believe would add a consistent administrative overtone to the Commission's decision to uphold the decision on the export of banned or hazardous products which was adopted and reaffirmed earlier this month.

We would also support the suggestion made by witnesses in Washington earlier this month to extend the applicability of the section 15 procedure to cover all products within the jurisdiction of the Consumer Product Safety Commission.

Once again, thank you very much, Chairman, for the opportunity to appear and congratulations to the Commission for its position on hazardous exports.

Senator **KASTEN**. Al, thank you very much.

Next on this panel is Nancy Grundle, the consumer reporter for WITI TV Channel 6, Milwaukee.

Nancy, it's great to have you with us.

STATEMENT OF NANCY GRUNDLE, CONSUMER REPORTER, WITI, TV

Ms. **GRUNDLE**. Good morning, Senator. It's nice to be on the other side this time. It's a little different I must say, and asking me for 5 minutes is difficult as my friends and colleagues will tell you.

First of all, I do commend you and the Consumer Product Safety Commission, as a matter of fact, for the diligent efforts in the area of toy safety, more importantly protection for our children.

I'm a consumer reporter. It's my job to inform the public about a variety of issues which include the recalls and problems surrounding products that affect our children in the marketplace. Maybe I take a special concern because I am the mother of two. Maybe because when I look at any child I see the helplessness of that tiny person and hope I can somehow protect that child by sending messages to the parent or guardian.

We hear of deaths. We hear of injuries. We hear of brain damaged children. All needless situations if only the parents and manufacturers would pay attention to what is safe for those children. We hear about these children as the hope and future of America, the building blocks of tomorrow. They are, but within that broad statement appear those little children, those leaders of tomorrow who want to enjoy childhood, plain and simple. They want to play to their hearts' content, and in the word "play" comes the main mechanism that can sometimes hurt rather than enhance childhood. That mechanism is toys.

Psychologists say that play is child's work. That is how they learn, develop and many of the toys help in that learning process. In the past few years I've seen better alerts to parents, I must say, in many areas of product safety in the marketplace. There's better information in the way of pamphlets, public service announcements, posters and media coverage, but that only scratches the surface unfortunately because while the poster is being hung, another death occurs. It seems like a never ending battle. We can't always reach everybody.

It's just as frustrating for myself in the media because the problem that I face is that if a problem with a product is not a problem in our broadcasting area, I can't report on it so as not to alarm the public, yet there could always be that one person out there who could have purchased the product in that other town or village or received it as a gift and thus they won't know about it through the media.

We have reported on many issues on the toy issue like the indoor gym house. Looked good at first, constructed of durable plastic. No sharp points and small enough for a child to play with inside the house where supervision by the parent should be easy. Yet three deaths were reported, one of a 3½ year-old entrapped in the ladder, and again plain and simple the head got caught.

How many people heard my report regarding this ladder? I don't know. Many people bought the product. Many people trusted the manufacturer and many people trusted the store where it came from, but the product was still on the market and waiting legislation to pull it off.

Then there's a problem with stringed mobile toys that hang above the crib or the bumblebee that we're looking at on the table right now. These products could strangle a child. Sometimes we can't prove any deaths or injuries, yet they remain on the market.

And then there's a problem of choking on small objects. I literally taped a session in the surgery area of one of our main hospitals, Childrens Hospital, especially to get the message out to parents and guardians about the dangers of small objects that children swallow, objects that block the airways. We showed the tools that are used by surgeons to dislodge the objects. We warned about the marbles, the soldiers, the small things that you see hanging on the boards, all of these sold in stores even today. And they get in the wrong hands because people don't read the labels or they are passed down from sibling to sibling, to the wrong age.

And then there are the toy chests, the keeper of these play things. Toy chests that were the cause of 21 deaths and two brain damaged children because due to the lack of safety hinges the top fell on the child's head. The toy chest stayed on the market. The most that I could possibly do was alert the parents and guardians and tell them where to get lid supports while these toy chests were being sold. I've tried the pamphlet route too in conjunction with the Consumer Product Safety Commission, and I had some of those available during the holidays, but during the holidays isn't enough. We need year-round protection for our children basically.

Pledges by manufacturers aren't enough. Letting manufacturers use their own voluntary standards aren't enough. Relying on information supplied by the manufacturers just isn't enough.

And waiting 10 years for mandatory safety measures before a potential accident happens isn't enough. I see too many reports on the toy hazards like the thousands who received emergency room treatment in eye-related injuries from projectile toys. We can't stop the hand-me-downs. We can't always see the hidden dangers in the toys, but I think that this bill and perhaps an extension of it along with publicity all over the place regarding the issue can enhance everyone's awareness of toy safety.

Perhaps we can see this bill passing forward into the area of children's furniture. We've seen some of it now, if it isn't there already, regulations that cover not only cribs, but playpens, dresser sets, layette sets, even rockers for children.

Manufacturers should be better regulated. There must be some way that these toys can be better inspected before it's out of their hands, perhaps during the initial design. Many of them do this, but still not enough.

The product liability law should reach out and protect the consumers and show manufacturers that our children's safety is of major concern and that heavy fines will accompany toy defects.

Stores should better warn parents about product labeling and age preference. For example, prominent notices should be displayed for parents to see the labels. Parents have to be reminded just like children time and time again.

Import toys especially should be regulated before they get into the country. Too many times I as a parent and as a reporter see unsafe imported toys on the market in large quantities, not only in the major areas, but in the small dime store units that we see, the neighborhood dime stores that are around town.

I know it's a lengthy, cumbersome and costly process. There are many manufacturers who try. After all, they have hefty lawsuits and they have reputations to keep. It's something that's difficult to enforce at times. I've covered conferences regarding toy safety where only a handful of people show up. I've seen the seat belt law over a year old and not enforced enough. I'm tired of seeing the long periods of time that it takes for an issue to be passed.

The fact is that toys are dangerous. They are sharp, small, detachable, electrical. They are small pellets on stuffed animals, projectiles on toy guns, strings on little dancing bumblebees like you see over there, and there's chemistry sets that blow up.

These tragic instances we hear of can be avoided if only parents, manufacturers and store owners realize that toys are definitely serious business. And I think this bill is finally going to bring that about.

Thank you.

Senator KASTEN. Nancy, we thank you. Hopefully as a result of the hearings that we're having here and in Madison, people in Wisconsin will be more aware of this issue. Furthermore, as I said before, we want to put legislative, political, and public pressure behind this bill so it won't get lost in the legislative shuffle.

There are many examples of people that have done just what you're asking without legislation. I'm going to introduce a representative of the Zayre Corp., who's been a leader in a number of these areas. And as Nancy Steorts said, McDonald's reacted in about 2 or 3 days.

At the Washington hearing, we heard interesting testimony from Mattel. Possibly Doctor Johnson is going to talk about this later, but what Mattel decided, was to use a special substance on some of the smaller parts of toys so that they could be found quickly with an x-ray or something like that. These kinds of changes are already happening and there are a number of companies leading the way.

I'm pleased now to introduce Pat Rouleau who is the manager of Consumer Services and Merchandise Quality Assurance, Trade Protection and Private Label of the Zayre Corp., in Framingham, MA.

Pat, it's good to have you with us.

STATEMENT OF PATRICIA ROULEAU, MANAGER OF CONSUMER SERVICES AND MERCHANDISE QUALITY ASSURANCE, TRADE PROTECTION AND PRIVATE LABEL, ZAYRE CORP.

Ms. ROULEAU. Thank you, Senator Kasten. It's a pleasure to be here. The reason I'm here is to give you an idea of what retailers are doing in the area of product safety.

Product safety is a major concern at Zayre. Each year we have several independent testing laboratories test thousands of the items we sell. We can't test everything we sell, but what we do impact on, first of all, are toys for children, particularly imported toys.

We feel the national manufacturers are doing a very good job in testing their products for the most part. We also tests items like pacifiers and infants' furniture and so forth. In addition to toys, we test anything from hair dryers to motor oil. We check for serviceability, durability and most important product safety. We test for government as well as industry standards.

In addition to testing our merchandise, and we try to test as much as possible prior to purchase, we monitor customer complaints from any of our 275 Zayre department stores across the country. If a customer brings something back and says that there is a problem with it, their child was hurt or could have been hurt from it, we have our stores immediately contact our office in corporate headquarters in Massachusetts and report the problem.

We try to get our hands on the particular item that was returned to the store and some new merchandise and test them and see what we find out. If there is a potential safety hazard, we immediately remove it from sale. We don't wait for the Consumer Product Safety Commission to tell us to do it. We do it and then we report to them immediately.

As far as working with the national manufacturer, if that's the case, we will encourage the manufacturer to contact the Consumer Product Safety Commission. If we feel for some reason they might not do it, we'll let the Commission know about it.

We react to all hazards immediately regardless of whether they are covered under the Consumer Product Safety Act or the Federal Hazardous Substances Act. That goes for toys as well as any other products. We've even voluntarily recalled an item as a result of one complaint.

A few years ago we had a complaint from a grandmother saying that her granddaughter was sitting in a high chair that we sold. It was from a major U.S. manufacturer. The child was rocking back and forth in the chair and she noticed that her head was bleeding. When they checked, they found that the screw was protruding from the pad just slightly. We had the product tested against new samples and found that the manufacturer was using a screw that was about a quarter of an inch too long and it was just enough to make it go through the padding and the child was being hurt from it.

We pulled that off sale immediately. We worked with the manufacturer. We replaced all of the screws. And that was very, very easy to rectify.

The introduction of this legislation is very important. We've had another case that we've been involved with recently on a bike, and we feel it should have been handled nationally a little bit faster. We removed a bike from sale in May of 1983. The handlebar stems were breaking in some of the items and the manufacturer said it was because of welding problems. We pulled ours off sale. They replaced the stems for us and for our customers and we took care of it.

In the meantime, I believe the manufacturer has been working with other retailers to fix the bikes, but it wasn't until June of this year that it was announced to the public as a national recall. I believe this is due to the lengthy process required to pull children's merchandise from the marketplace.

In addition to product testing, we try to provide information to our customers on matters in the interest of safety. We have brochures which I brought with me on toy safety, wood stoves—things that don't apply to children—we try to cover other things. We feel it's very important for our customers to have this type of information.

In summary, we're very much in favor of this legislation and we hope it receives quick passage.

Thank you.

Senator KASTEN. Pat, we thank you very much. Although the child restraint issue is not one of the issues we're with today, I know it's of great interest to many people in this room who have been working with children. We're pleased therefore, that you have brought along some of your question and answer factsheets regarding child safety.

As I say, it's not a subject of this hearing, but as Nancy pointed out, this legislation will cover children's furniture such as that crib. It would cover a safety restraint seat, and in fact all toys and children's products. We have made it as broad as we can in order to deal with the kinds of questions that you're talking about.

Pat, thank you for coming to Wisconsin to talk about this issue.

The next witness on this panel is Camille Haney who is the president of the Haney Co. She's here representing the Wisconsin Manufacturers Association.

Camille Haney.

STATEMENT OF CAMILLE HANEY, REPRESENTING THE WISCONSIN MANUFACTURERS ASSOCIATION

Ms. HANEY. Thank you, Senator and Chairman Steorts. I'm glad to be here, and I want to say that we in Wisconsin are proud that our Senator has taken the lead in introducing this important consumer protection legislation.

As you mentioned I'm the president of a consumer communications and research firm that advises businesses in the area of public affairs and consumer relations. I'm here today on behalf of the Wisconsin Association of Manufacturers and Commerce. I serve as their consumer affairs consultant and also serve on the board of the Wisconsin Safety Council, and although I'm here to represent the industry perspective today, I've also had firsthand experience in both government and consumer advocacy.

The Wisconsin Association of Manufacturers and Commerce wholeheartedly endorses the passage of S. 2650. Our members which include more than 20 toy manufacturers and distributors share your concern about any possibility that a child could be injured by a delay in recall of an unsafe product.

Children who cannot represent themselves in public policy discussions such as this hearing depend on our willingness to take responsible action on their behalf. It is incomprehensible that under our present Federal statute children's toys and other products used by children can take from 4 months to several years to be removed from the marketplace as has been mentioned before.

Our members strongly endorse the standards of the U.S. Consumer Product Safety Commission and its product recall procedures. Besides being in the public interest, it is also in the best interest of the reputable manufacturers and distributors to support expedient recall of unsafe products. We have a real commitment to seeing that uniform standards of enforcement are applied to toy manufacturers in every State.

Wisconsin has had the reputation for being on the cutting edge of important consumer legislation and for cooperative efforts between consumers and business. In 1975 Wisconsin toy manufacturers and consumers worked together to promote the passage of a strong State toy recall statute. In fact, Wisconsin has the ability to move faster than Federal agencies in removing dangerous consumer products of all types from the marketplace.

In researching this legislation, I spoke with a WMC member who is one of the largest toy distributors in the Midwest. He pointed out that the toy industry itself has done a good job of not just observing toy safety standards but setting those standards, and he added that standards within the toy industry are often even more stringent than those required by product safety laws.

Some companies have voluntarily removed products from the shelves without waiting for a Government agency to take the necessary legal steps to force a recall. The woman from Zayre's just gave an example of that.

Wisconsin toy distributors are highly selective consumers themselves when buying toys for their customers, both here and abroad. Toy buyers carry the CPSC bible of standards on buying trips and report that foreign manufacturers also are becoming knowledgeable about U.S. trade safety standards.

Manufacturers spend large amounts of time and resources on product improvement research. The example you gave, Senator, Mattel recently developed a nontoxic opaque additive for coating toys that makes them sensitive to x-ray films. In case of an accidental swallowing of a toy particle, that particle can be found more easily.

Wisconsin toy manufacturers already comply with their own safety requirements as well as those set by the State and Federal Government. They are as concerned as anyone about the safety of their small consumers. Most reputable toy makers develop their products with the highest possible safety standards. That is why it is important to have this legislation passed to ensure that the entire industry will have to comply with the provisions of the Consumer Product Safety Act.

The WMC does not feel that this bill will put any undue hardship on toy producers or distributors. Speedy recall of any product that could somehow slip through the regulatory safety net is the highest priority for manufacturers of children's products.

WMC applauds your role, Senator Kasten, and the leadership of Chairman Steorts in proposing this legislation. We are anxious to see hazardous toys and children's articles comply with the same recall procedures as those required for our consumer products.

Thank you.

[The statement follows:]

STATEMENT OF CAMILLE HANEY, PRESIDENT, HANEY CO., AND CONSUMER AFFAIRS CONSULTANT, WISCONSIN ASSOCIATION OF MANUFACTURERS AND COMMERCE

Thank you Senator. I am glad to be here and want to say that we in Wisconsin are proud that our Senator has taken the lead in introducing this important consumer legislation.

Today I am speaking as the Consumer Affairs Consultant to the Wisconsin Association of Manufacturers and Commerce (WMC). I am also on the Board of the Wisconsin Safety Council, a Division of the Wisconsin Association of Manufacturers and Commerce. The Wisconsin Association of Manufacturers and Commerce is a statewide business organization representing 3,000 companies and 100 local Chambers of Commerce.

Although I am here to represent the industry perspective today, I have also had first hand experience in government and consumer advocacy. I am currently the President of a consumer communications and research firm that advises businesses in the area of public and consumer affairs. Before this, I served as Consumer Affairs Coordinator in the Wisconsin Attorney General's Office of the Consumer Protection and was a member of the Product Safety Advisory Council of the Wisconsin Department of Agriculture, Trade and Consumer Protection. I also served two terms on the White House Consumer Advisory Council.

In fact, 10 years ago, while Bob Kasten was a Wisconsin State Senator, we worked together on some of the very same consumer issues that remain pertinent today—consumer information and education, consumer protection, dispute settlement and the appropriate roles of business, education, government and consumers in addressing these issues.

The Wisconsin Association of Manufacturers and Commerce wholeheartedly endorses the passage of the Toy Safety Act, Senate Bill 2650. Our members, which include more than 20 toy manufacturers and distributors, share Senator Kasten's concern about any possibility that a child could be injured by a delay in recall of an unsafe product. Children, who cannot represent themselves in public policy discussions such as this hearing, depend on our willingness to take responsible action on their behalf.

It is incomprehensible that, under our present Federal statute, children's toys and other products used by children, can take from four months to several years to be removed from the marketplace. A defective toaster can be recalled almost immediately, but a defective toy must go through an entire rulemaking process before a recall procedure can be initiated.

Our members strongly endorse the standards of the U.S. Consumer Product Safety Commission and its current consumer product recall procedures. Besides being in the public interest, it is also in the best interest of reputable manufacturers and distributors to support expedient recall of unsafe products. We have a real commitment to seeing that uniform standards of enforcement are applied to toy manufacturers in every state.

Wisconsin has the reputation for being on the cutting edge of important consumer legislation and for cooperative efforts between consumers and manufacturers. In 1975, our own state toy manufacturers and consumers worked to pass a strong toy recall bill in the state legislature. In fact, Wisconsin has the ability to move faster than Federal agencies in removing dangerous consumer products of all types from the marketplace. In researching this legislation, I spoke with one of our WMC members who is one of the largest toy distributors in the Midwest. He pointed out that the toy industry itself has done a good job of not just observing toy safety standards, but setting those standards. He added that standards within the toy industry are often more stringent than those required by the product safety laws. Some companies have voluntarily removed products from the shelves without waiting for a government agency to take the necessary legal steps to force a recall. Toy distributors here are highly selective "consumers" when selecting toys for their customers both here and abroad. Toy buyers carry the Consumer Product Safety Commission "bible" of standards on buying trips and report that foreign manufacturers are knowledgeable about American toy safety standards.

Toy manufacturers spend large amounts of time and resources on product improvement research. For example, Mattel, Inc. recently developed a non-toxic, opaque additive for coating toys that makes them sensitive to x-ray films in case of accidental swallowing of a toy particle. They are making the product available to other toy manufacturers as well. Toy producers have their own internal watchdog mechanisms and their products undergo extensive research under actual use conditions before these products are sold and distributed.

Wisconsin toy manufacturers already comply with their own safety requirements as well as those set by the state and federal government. They are more concerned than anyone about the safety of their small consumers. Most reputable toy makers develop their products with the highest possible safety standards. That is why it is important to have legislation such as this bill passed so that the entire industry will have to comply with the provisions of the Consumer Product Safety Act.

The Wisconsin Association of Manufacturers and Commerce does not feel that this bill will put undue hardship on toy producers or distributors. Speedy recall of any product that could somehow slip through the regulatory safety net is the highest priority for manufacturers of children's products.

The Wisconsin Association of Manufacturers and Commerce applauds Senator Kasten's role in proposing this legislation and is anxious to see hazardous toys and children's articles comply with the same recall procedures as those that are required for other consumer products.

Thank you.

Senator KASTEN. Camille, thank you very much.

I'm just looking at the clock, and I'm also told that we added a third panel yesterday at the request of some people at Children's Hospital. We're anxious to have their input, but I fear we're not going to have an opportunity to ask a couple of questions which we had prepared. I wanted to get involved in a discussion of recalls versus voluntary compliance. In other words, rulemaking versus recall. It's something that I think we'll ask a number of people who are testifying here to respond to in writing since we won't have an opportunity for a lengthy discussion. We did have an opportunity to discuss it during the Washington hearing and it turned out to be quite an interesting exchange. So, thank you all very much.

Al.

Mr. LUZI. Just one quick comment if I could and I just wanted to raise the point particularly in regard to the amendment on the bottom of page 5, staff draft, where the word insertion of "defect" is put into the language that is there on line 16 in regard to toys or articles containing a defect which creates substantial risk to children which did not appear in the original title, and the only comment I would want to make just quickly is that I would certainly be concerned about the insertion of that word because of legal proofs of burden in regard to the definition of defect as well as the fact that you may, in fact, have an article which could create a substantial risk to children and not necessarily be a defective article.

Senator KASTEN. OK. Thank you for that comment. We will respond to that, plus your other comments, and let me thank all of the members of this panel.

With all these wires we've got down on the floor it's a real jungle to get through.

Our next witness is Peggy Rosenzweig, Wisconsin State Representative and also a member of the Committee on Commerce and Consumer Affairs and the Committee on Health and Human Services, representing Wauwatosa, WI, and neighboring areas.

Peggy, it's a wonderful privilege for us to have you appear before the committee.

STATEMENT OF PEGGY A. ROSENZWEIG, WISCONSIN STATE REPRESENTATIVE

Ms. **Rosenzweig**. Thank you, Senator Kasten, and I want to thank you personally for giving me the opportunity to testify on behalf of S. 2650, the Toy Safety Act.

You gave my credentials, but the one that you didn't give or perhaps two that are terribly important to me is that in the first instance I am the mother of five sons, aged 13 to 25. Also I've had some experience in marketing before I joined the State legislature. So, I have some recognition of the problems in the business world.

All of these reasons I think give me a unique, perhaps not so unique, but important perspective on why this legislation is so needed and why I think you should be applauded for introducing it.

It's my opinion that children, certainly as everybody has indicated, are the most vulnerable citizens, young citizens of this country and do need protection, but for another reason too, I think it's terribly important that we take the time now to focus on the problem of toy safety because, in fact, the market is changing. The proliferation of products for children moves along at a very, very fast clip, and that is because our society does want to focus on how we can educate our children and make the quality of life for them even better, and parents, in an effort to make that quality of life better, oftentimes leap at a new product before they have had time to completely investigate it. So it's important that we in Government take this time to focus on this problem nationwide.

I won't go into the exact mechanism of your bill because, of course, it's been gone into before. But what I would like to talk about is what I think is terribly important in what you've done, and that is to work for the cooperation of the manufacturer, the consumer, and Government together working hand in hand to make legislation like this work, and I think that it needs to be done in a timely fashion. I think that you've pointed that out, but to get a consensus of all three groups so that you can work together in a cooperative atmosphere I think is terribly important because that trust that one starts with then enables one to move further legislation along as needed.

I think Wisconsin, as Ms. Haney has indicated, is a good example of that, and as a Wisconsin legislator I'd like to point out with great pride that Wisconsin has one of the strongest recall laws in the country, and, in fact, it was the first State in the Union to have such a recall law.

Statute No. 100.42 gives us the opportunity in the State of Wisconsin of recalling toys and all products, adult, children, off the market before a hearing. It also gives us the option of putting a 14-day hold on toys and other products, all products, adult products too.

We have 9 years of historical evidence to prove that this kind of legislation can work, that manufacturers, retailers, and consumers with Government can work to see that we have a safe environment for our children. It's terribly important that such legislation be

Federal, and I hope that this is the beginning of more things to come, and I just think your leadership is terrific, Senator. I hope that we can be helpful in our hearing here to focus throughout the country on the need for strong legislation in this area.

Thank you again.

Senator **Kasten**. Peg, thank you. As you can see from the makeup of the witness panels appearing before us, we have made an effort to pull all the different groups together. I think that one of the strengths of this effort, the reason why it's going to pass, is because we do have the support from the consumer groups, from the manufacturers, and from people in the medical community. I thank you for, No. 1, what you're doing for Wisconsin and, No. 2, for appearing before our committee today. We appreciate your testimony.

Ms. **Rosenzweig**. Thank you very much.

Senator **Kasten**. The next panel includes Gloria Rhone, Kenneth Johnson, Deanna Scampini, and Jim Brown. If you would all come forward.

Our first witness on this panel is Ms. Gloria Rhone, a registered nurse representing the Wee Care Day Care Nursery in Milwaukee, WI.

Gloria, we're happy to have you with us.

STATEMENT OF GLORIA RHONE, REGISTERED NURSE, WEE CARE DAY CARE NURSERY, INC.

Ms. **Rhone**. Thank you, Senator Kasten. I'm very pleased to be invited to speak on this panel today. Wee Care Day Care Nursery, Inc. is a private, nonprofit corporation. It was founded some 15 years ago by the executive director, Johnnie Moon. We have 10 centers in the State of Wisconsin, 6 concentrated in Milwaukee, a couple in outside communities and 2 in other major cities in the State. We are dedicated to the cause of quality day care and will support any legislation that may impact on the well-being of our children.

On behalf of Wee Care Day Care Nursery Centers, I would like to express our appreciation to you, Senator Kasten, for having sufficient interest and concern for the well-being of our children to initiate the writing of the Toy Safety Act. In my position as project director for the day care family health program at Wee Care Day Care, I'm responsible for the monitoring of the day care environment as it relates to the health, nutrition, and safety of the children enrolled in our centers.

It is very disturbing to have children's products recalled years after they have been purchased and used, particularly hazardous objects. Such was the case a few weeks ago with an infant walker. It was made by Community Play Things, and we've had it for some 3 or 4 years, and because of the lead base paint it was very recently recalled.

If this bill passes, it would have significant implications: One would be safer environments for the children, and I'm using the term "environments" because I further want to emphasize my hope that we will look into the various environments that children are exposed to and not simply concentrate on the home situation. So I believe that it will imply safer environments for the children, thereby reducing the total number of accidents occurring in our children.

According to the National Safety Council accidental deaths in children have declined from over 10,000 in 1978 to 8,600 in 1983. This decrease has been attributed to tougher Government standards for toys and children's furniture. Therefore, a more efficient recall system for defective and/or unsafe toys would have an even greater impact on the number of accidents related to toys and other children's products.

The second significant thing I think this bill would do is increase the sensitivity of the consumer in terms of selection of toys. Since it doesn't take 3 years to finally get it off the market, as people are bombarded with this information, I think they will develop a greater degree of sensitivity. The third impact would be tighter quality control or tighter quality assurance policies and procedures instituted by toy manufacturers. This would decrease the number of hazardous products available for public consumption.

I see the toy safety bill as a stepping stone to future legislation that would provide for a safer environment for our children, and I'd like to make the following recommendations for future consideration. One, and we've heard this one before, standards for imported toys. Second, would be expansion of the age labeling, and I would like to take it a step further and say that I would recommend that we consider age labeling across the media, and that would include TV, radio, newspapers, and magazines.

The third item would be general labeling. The terminology should be such that the general public could understand exactly— what hazards exist. For example, we often see on electrical toys "Underwriters approved." To tell you the truth, to Joe Average that means very little, but if it's stated that electrical hazards exist if improperly used, that would be more meaningful. So I'm looking at terminology.

Also I believe that labeling should indicate all potential hazards, whether it's a major hazard or minor hazard, and for instance things like contains small parts, hazardous to children under 6 years of age.

Another thing I'd like to recommend is that we look into public education in terms of toy manufacturers. That is, they could provide brochures that accompany packaging of toys or children's products that would include sections on need for parental or adult supervision, when parts should be replaced, how to select and buy toys, environmental factors that may render an otherwise safe product unsafe; implementation of a toll free number to respond to questions on the safety of toys and children's products, implementation of some type of Government stamp of approval for toys that meet Government regulations, statement of Government standards directed at types of materials suitable for use in toys.

Further, I believe that consideration needs to be given to party favors which usually become hazardous missiles. There's also a problem with party favors made of crepe paper that have hazardous dyes that often end up in children's mouths.

My last recommendation is when reviewing standards for toy safety the product should be evaluated for a variety of settings such as homes, school, day care centers and various conditions such as siblings' misuse and type of supervision required.

Thank you, Senator Kasten.

Senator KASTEN. Thank you for your additional suggestions.

This isn't something that stops with the passage of legislation. I'd like to think this is something that begins with the passage of this legislation. Again, we appreciate your comments and your suggestions.

Our next witness is Dr. Kenneth Johnson who is the chapter chairman of the American Academy of Pediatrics. He is also with the Milwaukee Medical Center.

Doctor Johnson.

STATEMENT OF DR. KENNETH O. JOHNSON, CHAPTER CHAIRMAN, AMERICAN ACADEMY OF PEDIATRICS

Dr. JOHNSON. Senator Kasten and guests, as you know I'm Doctor Kenneth Johnson, practicing pediatrician here in Milwaukee and chairman of the Wisconsin chapter of the American Academy of Pediatricians, which includes 287 pediatricians in the State. I'm here to speak in favor of the Toy Safety Act of 1984 introduced by you, Senator, and Congressman Waxman.

These bills would enable the Consumer Product Safety Commission to protect the public by ordering notice on repair, replacement or refund of toys or articles which creates substantial risk to children. Certainly children should have the same protection afforded our nation's adult population.

Safety cannot be overemphasized. In 1975 the American Academy of Pediatrics, a nationwide organization, stated its interest in safe toys for preschool children and stated that a test method utilizing the transfer of all known types of energy, chemical, accoustical, nuclear, mechanical, electrical, thermal and biological should be the basis of scrutiny to eliminate hazards and be the model for universal adoption by toy manufacturers. Such a comprehensive testing should be performed on all children's articles and failure to comply should enable the Consumer Products Safety Commission to act swiftly to eliminate the hazards.

If we do not have this protection, then some of the things could happen that I have examples of here today. The display collection over there in the corner entitled foreign bodies is a collection of items removed from children at Milwaukee Childrens Hospital, and in this collection there are items, some of which are parts of toys that came dislodged from the toys and lodged in children.

For the sake of time I'll just refer you to the display, but there are small toy disks thereon which were found in the esophagus of a 1-year-old boy and the dramatic sink drain in the center which was found in the mouth of a 13-month-old child. Numerous other examples there that you can all look at at your leisure.

To eliminate these problems we need toys that are safe by being relatively indestructible and of large enough size not to be aspirated.

We can't rely on voluntary recall for the swift removal of all dangerous products because not all manufacturers comply voluntarily.

I do want to give credit to those manufacturers who have cooperated by voluntary recall, some of which would be explained by Evenflow's little squeaker pacifiers which were shown to pull apart and enable the parts to be aspirated or Fibroclay by Milton Bradley Co., an art modeling compound used in papier-mache found to contain asbestos, Durham Industries which removed the Mickey Mouse crib train which could break apart and cause small parts for choking.

We must also constantly be aware of changing times. In 1971 the Federal Government standard required that all fabrics used in children's sleepwear be resistant to ignition when exposed to flame and stop burning once the flame is removed. We thought we were safe.

We now know that any soap product such as bar soap, powder soap, liquid soap when used in washing a flame-resistant garment can cause the afterwash residue that can build up on that fabric and become flamable again. This can be prevented by using phosphate, powder detergents or heavy liquid detergents and rinsing thoroughly.

Numerous other examples have been enumerated in the June 8 Washington hearings. I would like to stress and compliment the development by Mattel Toys of the barium sulfate additive that now enables plastic in toys to be radiopaque for diagnostic purposes. We also need ongoing legislation to—and educational programs to make parents aware of the potential dangers. They must constantly assess the toys for wear, potential breakage, newly developing hazards that cannot be protected for forever by the manufacturer.

We need more warning labels on products to build awareness such as Gerber meat sticks which carry a new labeling that warns of possible choking hazards and advises parents that this food should be fed only to toddlers who have learned to chew properly, or the button disk alkaline batteries used in toys, watches, cameras, et cetera, that now have a warning that's susceptible by children to choking or swallowing accidentally. These are harmful as they disintegrate and can cause mercury poisoning or chemical erosions of the body.

We need public service announcements pointing out these potential dangers. We need awareness programs to help parents realize the potential dangers such as the injury prevention program of the American Academy of Pediatrics. We can never rest on the laws of our land to protect us, but we can certainly be thankful to Senate bill 2650 as another step for better protection in our living.

Thank you.

Senator KASTEN. Doctor Johnson, thank you very much. For those of you who haven't had an opportunity to look at the display entitled foreign bodies that Doctor Johnson brought, it was really an education for me. Most of the toys and children's equipment that are before us came with me from Washington. I should say from the Consumer Product Safety Commission in Washington. These are examples that we have been using in order to dramatize this problem and the need for this legislation. But Doctor Johnson has come now with, I think, an even more meaningful display, and I hope that everyone will take a look at it. It's an incredible array of different objects collected over what period of time? Are we talking about a couple of years or 6 or 7 years?

Dr. **Johnson**. Probably over a 15-year period.

Senator **Kasten**. Over a 15-year period.

Dr. **Johnson**. This isn't all comprehensive. These are just examples.

Senator **Kasten**. Our next witness is Mr. Jim Brown, the president of the Wisconsin Consumers League.

Jim, you appeared before our subcommittee in Washington, I believe. It's nice to have you with us today.

STATEMENT OF JAMES L. BROWN, PRESIDENT, WISCONSIN CONSUMERS LEAGUE

Mr. **Brown**. Thank you, Senator. It's a fine opportunity for the WCL to again appear before you.

WCL is the largest statewide consumer organization in Wisconsin, and product safety in many forms has been a major concern of ours for years. Accordingly we welcome this opportunity to lend our support to many of the groups and individuals appearing before you today. We're pleased that you, Senator Kasten, as our Senator are sponsoring this effort and I'm also personally pleased that Representative Rosenzweig who happens to be my assembly representative is here endorsing this legislation.

Clearly when government acts or is empowered to act to protect the public safety it's both appropriate and vital that its efforts and authorities be directed toward protecting those more vulnerable to potential harm. These persons most typically fall into two categories; first, those most frequently exposed to dangerous situations or products and, second, those least able to identify, assess, and protect themselves from potentially dangerous situations or products. This latter group most commonly include the handicapped and children and it is, of course, children who would be primarily benefited by meaningful enforcement activity upon the enactment of S. 2650.

What we would urge is that more than merely expedited legal authority be conferred on CPSC respecting this subject. On June 25, 1981, speaking before the Subcommittee on the Consumer of the Senate Commerce Committee chaired by you, Senator Kasten, I observed that regrettably enforcement all too often has been the black sheep of the consumer protection family. I went on to lament that all too often additional substantive consumer protection responsibility is placed on regulatory agencies by legislative bodies while they refuse or neglect to add additional support services and staff to such agencies to effectively develop and enforce implementing regulations.

In response to a question from yourself, Senator Kasten, regarding this problem, Wisconsin assistant attorney general James Jeffries, former chief of the State department of justice, consumer protection division, indicated that, too often enforcement has been the forgotten child is absolutely true. We would also note that at least one leading commentator in the field of safety regulation indicated that the failure by the Food and Drug Administration, the agency with responsibility for administration of the Federal Hazardous

Substances Act statute that would be amended by S. 2650, "to update staff resources on product safety matters was a major cause of the establishment of a new agency, namely the CPSC, for that purpose." That's Attorney Michael Lemor of Washington, DC.

We would urge you not to repeat this mistake and would note that meaningful enforcement involves both investigation and prosecution, prophylactically and monitoring on an ongoing basis. If S. 2650 were to make the process of removing unsafe toys from stores easier by removing procedural hurdles and filling gaps of authorities, then presumably more agency activity in this area would then follow.

Without support for this activity either it won't occur as intended or other agency activities will diminish as support resources are shifted within the agency to implement this new directive. The former instance would be a cruel hoax on all interested in toy safety, while the latter responsibility would result in an unintended and unfortunate reduction in other safety-promoting efforts of the agency.

We can't believe that either outcome is intended by you, Senator Kasten, or any other supporter of safe products. Put more bluntly, if the police are to be given expedited authority let's make sure they have the tools to implement that authority.

By way of technical suggestions, our comments are few but we feel important. Again referring to the staff working draft of June 13, on both page 2 at line 12 and page 3 at line 11, the substantive or operative language is, "contains a defect which creates a substantial risk of injury." We would suggest considering the omission of the requirement of the finding of the defect. This adds a separate requirement that may or may not in fact create a procedural barrier towards effective enforcement action.

We're not terribly comfortable with the idea that a court might or might not find a defect, most typically a design defect, in one of the products that you have demonstrated here today. We feel that by removing that requirement, you will probably expedite the possibility of effective enforcement.

We would also note that the Wisconsin statute to which Representative Rosenzweig referred earlier, section 100.42, subsection 3 contains language operationally substantially similar to the goal that we believe S. 2650 seeks, but it does not contain the requirement of a finding of a defect. The operative language there is, "unreasonable risk of injury or imminent hazard to the public health safety or welfare." We believe that if there is any possibility that the legal requirement of the finding of a defect might inhibit effective enforcement, that that possibility should be removed.

Now, we admit that this is somewhat broader than the comparable section of the Consumer Safety Act, section 15. However we feel this is justified as it is aimed at children who as we indicated before, and there seems to be a consensus here, probably need special assistance with regard to the products that they deal with.

We also would note that this expedited enforcement would be a benefit to manufacturers and any other party if the expedited agency action somehow would prevent a subsequent expensive product safety liability action, a topic with which we know you have more than a passing interest and great familiarity.

We would also urge your considering—perhaps not in the context of this bill, but considering extending the recall provisions of concepts incorporated into the staff working draft to the Flammable Fabrics Act and the Poison Prevention Packaging Act as well.

We would like to congratulate you on your efforts on this act and urge your prompt action on this legislation.

Senator KASTEN. Jim, thank you very much.

As you said, the goal of Congressman Waxman and I, when we began was to make the Federal Hazardous Substances Act equivalent to the Consumer Product Safety Act. That's why we picked up some of the wording. But I'll be happy to review your comments once more. I think Al was touching on the same point as well. Our goal was to make the two the same, to make them equivalent. That's why we adopted that. I think the Consumer Federation of America supported the equivalency concept in testimony before the House. But let us digest and work with that again.

Mr. BROWN. We certainly support the equivalency motion, Senator, and we urge at least consideration be given to expediting this further through the elimination of a potential barrier. It may well be in practice that most courts would find a design defect with regard to these types of products, for example, but if there's a possibility that—as an attorney I can tell you that sometimes these things can't always be relied on when it comes to judicial enforcement.

Senator KASTEN. Thank you.

Our next witness is Deanna Scampini, who is a speech pathologist from Wauwatosa, WI. Deanna, I apologize for skipping over you. We're pleased to have you with us.

STATEMENT OF DEANNA SCAMPINI, SPEECH PATHOLOGIST

Ms. SCAMPINI. Thank you. I'm speaking as a speech pathologist and also as a parent of three preschool children and who I feel are most vulnerable in this case.

I strongly support the passage of the bill Senator Kasten is proposing. Although I feel great strides have been made in recent years regarding toys and children's products, it has been my experience to encounter some extremely hazardous toys on the market. As an example, most combat-type toys like guns and pirate toys, bows and arrows, things like that come to mind most readily.

While these typically have age limits stated on the package, they far too often fall into the hands of a child who is too young or too immature to handle them. Another example is the indoor gym house which I purchased for my children. Like was stated earlier, it's a reputable dealer and you feel you can trust them. Shortly after that I was made aware of the safety hazard involved. The top step of the ladder was too close to the platform which could cause strangulation should a child's head get wedged in between them. I saw a notice regarding this hazard on the local news. The manufacturer was offering to replace the ladder at no charge to me with one in which the steps were placed so that the child's head could not be wedged and entrapment could not occur, but this was not until the death of a child or as the sign states three children until the hazard was brought to light.

Other children's products which need constant supervision of safety standards are swing sets, playpens, safety gates, play yards, cribs and car seats. All of these are potentially dangerous articles. Car seats, for example, are often more dangerous when not used properly than if the child was in no restraint system at all.

Pricing of toys and other products has a great impact on which articles a parent buys. In an effort to save money a parent may buy a cheaper model which in most instances is an inferior product. To reduce the price some swing sets, for example, are made of an inferior grade of metal not strong enough to withstand the abuse of children constantly playing on it. Cheaper plastics which may look good in the packaging and seem to be a better buy will in all likelihood crack or break rendering the toy unsafe because of sharp edges.

In this light I feel minimal standards should be set regarding the quality of materials used, be it plastic, metal or wood.

Age labeling also can be very misleading. What one child can handle at age 4 is very different from another child depending on the developmental stage of that child. Maturity levels, both physical and emotional, are very different in children of the same chronological age. Parents need to know what their child can safely deal with. Oftentimes toys are purchased because of the age level stated on the packaging, but it's not until the toy is in the hands of the child is it known whether it's meant for him or not, and all too likely it isn't.

I feel there's a greater need for communication between parents, doctors, toy manufacturers, consumer protection agencies and the media to evaluate and educate others regarding children's products.

Parents need to know who to contact should a toy which they have purchased appears unsafe. The Consumer Product Safety Commission in turn should be able to have the article recalled without delay so as to protect children from its hazards. Passage of the Toy Safety Act will expedite the recall of potentially dangerous products thus protecting our most valuable resource, our children, before tragedies can occur.

Thank you.

Senator **Kasten**. Deanna, thank you.

I'd like to thank all the members of this panel. It's interesting that one of the things that this legislation doesn't touch on, but that almost everyone on both panels has mentioned is this age labeling question. It's one that maybe we ought to pay a little bit more attention to on the consumer subcommittee. Nearly all of you in spite of your different viewpoints, have stated, that right now the age labeling system is not adequate. I'm very interested in those comments. We don't address that question, but maybe we ought to. Thank you all very much.

Our next panel is Mr. Vice, Dr. Montgomery and Mr. Showers, all representing Milwaukee Children's Hospital. I am particularly pleased to have Dean Showers on the opposite side of the table from me. For a long time he sat behind me in the State Senate and we've worked for and against each other in a number of different ways in the past. I'm happy that we're all working together now. John Vice is the President of the Milwaukee Children's Hospital.

Doctor Edwin G. Montgomery, Jr., is the chief of staff at Milwaukee Children's Hospital and Dean Showers is the public relations director of Milwaukee Children's Hospital.

Gentlemen, proceed in whatever order you had planned.

STATEMENT OF JON E. VICE, PRESIDENT, MILWAUKEE CHILDREN'S HOSPITAL

Mr. **Vice**. Thank you, Senator Kasten. We'd like to thank you for this opportunity to support the Toy Safety Act of 1984.

As I understand, the main point of your bill is to provide faster recall from the market of unsafe toys or other articles that are intended for use by children. It's ironic that because of apparent legislative oversight the Consumer Product Safety Commission can more easily recall products intended for adult use than it can for those unsafe toys and other articles meant for use by children. Our children are vulnerable enough as it is. It is possible that trusting parents can purchase and provide to their children unsafe toys.

We at Milwaukee Children's Hospital strongly urge speedy passage of this Toy Safety Act. Because of the current cumbersome procedure it can take up to 2 to 3 years to remove from the market an unsafe product or toys that parents would continue unwittingly to provide to their trusting children.

At Children's Hospital we care for sick and injured children as well as their families. That is our mission. It is a logical extension of that mission for me to support this legislation today.

You know children are injured every day when the most unlikely of objects end up dangerously lodged in their bodies. You have seen today on the board the display of some of the objects our physicians have removed from—over the years from the children. The display comes from our histology laboratory. These objects have been removed from baby's lungs, their stomachs, nostrils, ears, mouths, airways and other orifices.

As you see from the board there are objects such as a metal belt buckle, plastic hanger, earrings, rubber bands, hat pins, thumb tacks, and a large sink drain. If so many children can be injured by such unlikely objects, you can imagine how many can be injured by unsafe toys that people trust. It is for this reason, for the children's sake, that the Toy Safety Act of 1984 must be successful.

Thank you.

Senator **Kasten**. Thank you. Do either of you other gentlemen have brief comments?

STATEMENT OF DR. EDWIN G. MONTGOMERY, JR., CHIEF OF STAFF, MILWAUKEE CHILDREN'S HOSPITAL

Dr. **Montgomery**. I'm Doctor Edwin Montgomery, chief of staff at Children's Hospital, and I appreciate the opportunity to testify in support of the Toy Safety Act. The only problem I see is that we cannot ban sidewalks. We used to treat the kids on their skateboards and now it's the break dancers who are getting bruised heads and so forth, but as chief of staff at Children's Hospital I'm in touch with numerous pediatricians and surgeons who have seen all too many childhood injuries caused by unsafe objects on the market and that's certainly the reason why I support this legislation.

I think it's reasonable to say that no one deliberately designs unsafe toys or other articles for use by children, but that is exactly the reason this legislation is as important as it is. Most consumers assume that what they buy for their children is safe. It is critical then that the Consumer Product Safety Commission be provided with a procedure to recall unsafe objects our youngsters may be using just as swiftly as it can recall other consumer products. I in particular remember an incident reflecting on that problem of one youngster who we saw with a chronic hacking cough for 6 or 7 months. Despite the best efforts I'd like to think of myself and several colleagues it could not be diagnosed until she ultimately coughed up a plastic toy stool from a doll house.

It was not radiopaque. it was heartening to hear that Mattel is making a radiopaque substance. This is the kind of action that is desperately needed and will make our children much healthier.

Senator KASTEN. I might say, we heard from Mattel in Washington. Not only is Mattel going forward and doing this, but they are making the technology and in fact the whole process, available to the entire industry through one or more of these toy manufacturers associations. I think it's fair to say that within the foreseeable future, it's likely that not only Mattel products, but all domestically manufactured products will have that new feature. Mattel and the industry should be commended for it.

Dr. MONTGOMERY. I agree. We may not see a lesser number of foreign bodies, but we'll see them quicker. I think that's important too. It certainly seems apparent that the only reason that the commission is currently saddled with a lengthy recall process on unsafe toys and other articles for children has to do with what you, Senator Kasten, have called a legislative quirk. As a citizen I can't think of any reason to oppose this legislation.

In fact I think it's heartening that this proposal is supported by Representative Waxman, a California Democrat, as well as you, Senator Kasten, a Republican. I was also pleased to learn that this proposal was supported by the Consumer Product Safety Commission and that no significant opposition has surfaced from consumer groups, the toy industry or Government agencies.

I would hope that that's an indication that the Toy Safety Act of 1984 will quickly pass both the Senate and the House and will be signed into law by President Reagan.

Thank you.

Senator KASTEN. Thank you, Doctor Montgomery.

Dean Showers.

STATEMENT OF DEAN A. SHOWERS, PUBLIC RELATIONS DIRECTOR, MILWAUKEE CHILDREN'S HOSPITAL

Mr. SHOWERS. Senator, I'll be a little briefer than some of my stories used to be in covering the State Senate. I want to thank you for allowing me to support the S. 2650. Today I'm representing the Toy Safety Program of Milwaukee Children's Hospital.

In December each year Children's Hospital provides a program that we call safe and sound toys, holiday gift sponsored by the

Child Life and the Human Resources Development Department at Children's Hospital. The program was aimed at parents, day care coordinators and others who might provide children with toys, especially at Christmas time with the Christmas rush.

The program discussion and demonstrations include provision of the Consumer Product Safety Commission regulations, stimulating age appropriate toys, teaching children respect for their toys, making safe, creative toys at home and also we provide a panel of toy store experts.

The toy safety people at Children's are strongly in favor of the Toy Safety Act of 1984. We believe it's critical to empower the Consumer Product Safety Commission to recall unsafe toys and other articles intended for children without the lengthy processes the Commission now must use. We also believe that consumers must behave in a responsible way, and that's why we started our toy safety program.

In that regard we've noted that the toy industry has not come forth in opposition to Senate bill 2650. We believe that the proposed sub C, sub 1 provisions adequately protect both sides in this marketplace issue, that is, the manufacturers, distributors and dealers on the one hand and consumers on the other.

While it's true that the Commission would have to make a judgment as to whether a toy or other article intended for use by children creates a substantial risk, the Commission would have to provide a hearing for all concerned before making that judgment. We believe that children and their parents need this added protection in the law. There's no sound reason that we can think of for toys and other articles intended for use by children to be treated differently than other consumer products.

Thank you. If you have any questions I'd be glad to answer them.

Senator KASTEN. Gentlemen, thank you all very much. I'm particularly pleased to have the testimony and the strong interest of Milwaukee's Childrens Hospital. Thank you for appearing before the subcommittee today.

That concludes the regular witnesses that were scheduled on the panel. It's my understanding that there's at least one individual, Mr. George Wagner, who wishes to come forward briefly representing the public, and, Mr. Wagner, why don't you come forward now.

STATEMENT OF GEORGE WAGNER, LIBRARIAN

Mr. WAGNER. Fine.

Senator KASTEN. We'll give you a couple of minutes. We're overschedule right now.

Mr. WAGNER. Thank you much, Senator. I appreciate the opportunity. I'm a children's librarian in the city of Milwaukee, and I have worked with children for a number of years, and I would really basically just like to reiterate something that Mr. Luzi said from the Consumer League. And that is that in the legislation that you are proposing that you include something to the effect that there will be a provision that would forbid U.S. corporations from selling these items to other countries.

As you know and many in the audience probably are aware of, there has been a practice in the past of dumping unsafe and hazardous products from pesticides to drugs to appliances to different kinds of apparel onto unsuspecting Third World nations by some American corporations, and I would hope that that Senate bill 2650 would include provision for not allowing that to occur.

That's really all I wanted to say. Thank you much.

Senator KASTEN. I thank you, Mr. Wagner, for your comment, and Mr. Al Luzi and also a couple of other people have referred to this point. You've now reemphasized it. I'm not sure what the jurisdiction of the Consumer Product Safety Commission is with these kinds of export issues. They involve more than just the Consumer Product Safety Commission which is primarily an independent domestic regulatory agency. However, because of your comments and other people's comments. I think this is something we can research and consider, if not in this legislation, possibly as a part of some other legislation. I think your point is well taken.

Mr. WAGNER. Fine. Thank you much.

Senator KASTEN. Mr. Wagner, thank you very much.

I would like to now in conclusion thank all of the witnesses who appeared here today. I think we made a very strong record on behalf of the need for our Toy Safety Act, Senate bill 2650. I'm optimistic that we are going to be able to see swift passage of this bill. Congressman Waxman's bill has been considered by the proper committee and the House of Representatives is now going forward. Our bill will be going forward as well. Once more, on behalf of the Consumer Subcommittee of the Senate Commerce Committee I'd like to thank all the witnesses who appeared here today. We will likely to be getting back in touch with at least some of you with questions that we would like to have you respond to in writing regarding some of the specific examples that we talked with.

Thank you very much. The committee is adjourned.

[Whereupon the committee adjourned at 10:30 a.m. until 2 p.m., July 2, 1984.]

TOY SAFETY ACT

MONDAY, JULY 2, 1984

U.S. Senate,
Committee on Commerce, Science, and Transportation,
Subcommittee on the Consumer,
Madison, WI.

The hearing was held at 2 p.m., at the Dugeon Center for Community Programs, 3200 Monroe Street, Madison, WI. Hon. Bob Kasten (chairman of the subcommittee) presiding.

OPENING STATEMENT BY SENATOR KASTEN

Senator **Kasten**. The hearing will come to order. This is one of a number of field hearings being held by the Consumer Subcommittee of the Senate Committee on Commerce, Science, and Transportation. Today's hearing is a continuation of field hearings we are having on the Toy Safety Act, S. 2650. We are pleased to be here at the Dudgeon Center for Community Programs. I would particularly like to thank at the outset Frank Siscondin, Brian Adams, and Jill Steinberg. We would like to thank you all very much for your help.

The first witness was to be Nancy Harvey Steorts, who is the Chairman of the Consumer Product Safety Commission. Unfortunately Nancy became ill between the hearing we held this morning in Milwaukee and this afternoon's session so now she is in an airplane on her way back to Washington. Speaking on behalf of Nancy Steorts will be Mr. Vic Patralia, who is Regional Director of the Consumer Product Safety Commission. Mr. Patralia.

STATEMENT OF VICTOR P. PATRALIA, REGIONAL DIRECTOR, CONSUMER PRODUCT SAFETY COMMISSION

Mr. **Patralia**. Thank you, Senator. The chairman asked me to enter into the record her personal statement as Chairman of the Consumer Product Safety Commission, so I will read it in her words.

It is with great personal pleasure that I come before you today to comment on the Toy Safety Act of 1984. First I would like to take this opportunity to commend Senator Kasten for having the foresight to introduce this bill. I believe it shows sensitivity to the needs of the American consumer. This bill will hopefully correct the legislative quirk that has for 10 years hampered the ability of the Consumer Product Safety Commission to work expeditiously to protect our children.

Second, I would like to call attention to what I believe to be the most important aspect of the bill; namely, the time factor. This bill will allow the Commission to move swiftly. Its swiftness is best understood in comparative terms. It has been pointed out that it is often easier for the Commission to recall a product intended for adult use than to recall hazardous toys and children's articles due to a weakness in the Federal Hazardous Substance Act.

Let's look again by example of the squeeze toys. Although most manufacturers will be cooperative, two firms are not. This meant that it took from 1981 to 1984 for the American marketplace to be free of a substantial product hazard. In contrast manufacturers are often far more willing to take prompt, corrective action for an adult product because they know that the Commission does not need to go through protracted 30(d) proceedings. Instead it can rapidly issue an administrative compliant to compel a recall or other appropriate corrective action.

A case in point is the Commission's recent voluntary recall on an electric space heater. The heater had been involved in six fires, including one in which an 18-month-old child perished. The Consumer Product Safety Commission contacted the manufacturer about this problem in February of 1984, and a recall was announced in April of 1984. This means that it only took 2 months to get an adult product off the market while it took 2 years to do the same with a child's toy. I am pleased that, in the future, the chances for such an intolerable and unconscionable delay will be eliminated.

Third and lastly, while we are talking about safety of children's products, I would like to emphasize my belief that much needs to be done in the area of age labeling. Age labeling is a key way that industry can help make toys safer for the individual child. I would like to see on every toy, particularly those intended for children 6 years of age and under, appropriate age recommendations and an explanation of the safety reasons behind the recommendation. In other words, better information for the consumer. I am confident that the combination of better age labeling for toys and the ability to recall hazardous children's products quickly will go far in reducing the tragic toll of toy-related injuries. Although toys are safer on the whole, in 1982 there were still 123,000 injuries. That figure is simply too high. Again, thank you, Senator Kasten, for the work you have done in bringing to fruition the Toy Safety Act of 1984.

These were the words of Nancy Harvey Steorts.

Senator **Kasten**. Vic, thank you very much. Let me say as we open today's hearing, that the legislation before us is designed to expedite the recall of unsafe toys and other articles intended for use by children. Under current law, the Consumer Product Safety Commission may order the recall of these products only after engaging in a very complex and cumbersome process. Basically because of a legislative quirk, it's often easier to withdraw products intended for adult use than it is to recall hazardous toys and children's articles. In other words, it would be easier for the Consumer Product Safety Commission to immediately remove from the market a defective toaster or iron than an unsafe toy such as this or any number of the toys and other children's products that we are going to look at in a moment. It takes them years to go through exactly the same kind of process that enables them to recall an adult product in a matter of months.

There is absolutely no reason that it should take longer to recall children's toys and articles than it does to recall other consumer goods. In fact, a number of us feel that children's products are the products that probably should be removed from the marketplace first. Since children are particularly vulnerable and often are unable to protect themselves, toys and children's articles that present a substantial risk of injury should be removed from the market as quickly as possible.

The Toy Safety Act will amend the Federal Hazardous Substances Act to allow the Consumer Product Safety Commission to order the immediate recall of toys and children's articles that contain a defect which creates a substantial risk of injury. The Consumer Protection Safety Commission would no longer be required to issue a final rule banning a hazardous toy or article before it may begin a recall process.

As we begin the hearing, I would like to ask Vic to join me in demonstrating to you some of the specific examples in which we have seen problems in actually getting a recall.

We will begin right here with a squeeze toy. This particular toy or rather these kinds of toys we gathered here for our five examples resulted in the deaths of four children and five injuries after two firms refused to recall them. Once we finally got the whole process going, we were eventually able to demand a recall.

Here is an example of a squeeze toy that's a dangerous size and shape. This obviously can be swallowed by the child.

Now, let me go over to the exhibits. I will try to speak up so that you can hear and I will ask for Vic's help if I need it. This is an example of a mesh playpen. The playpen operates like this. This piece is firm when it's in the upright position as it should be all the time. However, now when they meet it collapses. What's happened is that a number of people put their children in the playpen and then just because it is easier, left this down and the child rolled into the mesh. As a result, in this particular example, 11 deaths are due to the fault we have seen right here. It took us over 2 years in recall proceedings. Actually, part of this issue is still in litigation today.

Now, let me show you one more example. This is, as you can see, a headboard, from a crib or bed. Obviously, a child's head can be caught in this design. In this example, a number of injuries, and deaths resulted simply because of faulty design. Once more, the Consumer Product Safety Commission identified the problem, but they were unable to do anything about it.

A relatively newer kind of item that people are worried about are the toys that hang right above the crib. Obviously, this is the kind of toy a child could get wrapped up in and strangle himself or herself. The Consumer Product Safety Commission already knows of at least two deaths due to this kind of hanging toy, and is right now trying to move against them.

This is a particularly interesting one, and Vic, if you can help me, the problem here is that, No. 1, the headboards go up and down and, No. 2, the thing is not well made. The result is that it collapses, and the child ends up being suffocated in the corner. There have been 46 different Consumer Product Safety Commission in-depth investigations of this particular problem. In 19 of the cases, children have died! Yet we still have been unable to go through the process required to get this off the market.

I just wanted to simply demonstrate to you four or five different examples of what we are trying to do.

There is no reason why it should be easier to get a toaster or an iron or a product made for adults off the market when it takes years, and in some cases several deaths, before we can see any kind of action from the Federal Government in the recall of children's products.

I would like to welcome all of our witnesses here today. They will be offering a variety of perspectives on the subject of children's safety. There will be an opportunity for questions afterwards. We will be hearing from representatives of the Department of Health and Human Services, the Department of Agriculture, and the Midwest regional office of the Consumer Product Safety Commission.

Also represented here are the Center for the Public Interest, Target Stores, Puzzlebox, American TV of Madison, American Academy of Pediatrics, Satellite Child Care, and the University of Wisconsin, School of Family Resources and Consumer Services. I am particularly pleased to have the opportunity to visit with all of these different groups representing people with very broad and different perspectives.

Our first panel will consist of Mary K. Ryan, Janice Durand, Renee Goodroad, and Bruce Edmonson. If you will come forward.

The witnesses have already been informed that their entire statements will be made a part of the record. Therefore, we are hoping that you will limit your deliberate remarks to roughly 5 minutes.

The first witness is Mary K. Ryan, the consumer advocate for American TV of Madison. We are happy to have you with us.

STATEMENT OF MARY K. RYAN, CONSUMER ADVOCATE, AMERICAN TV AND APPLIANCES OF MADISON, WI

Ms. **Ryan**. Thank you, Senator.

Good afternoon. My name is Mary K. Ryan. I am consumer advocate with American TV, a discount retailer of products for the home, headquartered in Madison, WI. I am also appearing in my role as a Dane County supervisor representing the 18th District of the city of Madison.

My familiarity and involvement with product safety stems from the fact that prior to joining American TV, I was the administrator of the Consumer Protection Division of the Wisconsin Department of Agriculture, Trade and Consumer Protection. Prior to that I was the Director of the Bureau of Compliance with the U.S. Consumer Product Safety Commission in Washington, DC.

Although American TV does not sell toys or products that one would normally characterize as intended for use by children, as a retailer we are concerned that we do everything we can to prevent the distribution of products that are hazardous or that we do not comply with Federal, State or local laws. And we have in fact on our own initiative prevented the distribution of such products on two occasions. One product was a cleaning agent that was misbranded under both Federal and State law. We did not sell any of the product but notified both Federal and State agencies. We also notified the manufacturer and advised them whom to contact at both the Federal and State level. The other product, through a quirk in the local ordinance, could be sold legally but could not be used legally by the consumer. American opted not to sell the product and also advised the manufacturer which agencies to contract for direction.

But what is significant is the fact that most retailers do not have someone on their staff who is technically conversant with product safety laws; nor are most retailers equipped to test products for hidden hazards. Just as consumers tend to rely on retailers, retailers have to rely on their suppliers.

This was a problem with which we grappled when I was with the Commission. The Commission struggled in vain to find ways retailers could participate more effectively in identifying hazardous products before they reached the consumer but recognized the ideal and failsafe safety net was unachievable and that in fact most retailers were as vulnerable as consumers.

Consequently we relied heavily at that time on notification mechanisms to help trigger retailer response; to enlist their support in recalls. We did so in full knowledge that recalls are not cheap; they involve manpower costs and expenses. Recalls also interrupt the normal business cycle in an industry that is highly competitive and which works on narrow margins. However, we never encountered resistance—only cooperation as the need for the recall was understood. This was also my experience with retailers when I was with the State. Retailers are close to the consumer; they rely on repeat business generated by trust, service, a commitment to customer satisfaction and, needless to say, a commitment to their safety and to the safety of their families.

Recall notifications have another benefit. To the extent they explain the hazard, recall notices are an information tool; they communicate, admittedly only on a case-by-case basis, but they nevertheless communicate product safety principles which can be used in making subsequent purchasing decisions. This is a benefit that should not be minimized.

That is why this bill, which has bi-partisan sponsors—Senator Kasten of Wisconsin and Representative Waxman of California—is so important. It will provide the kind of notification about hazardous products needed to enlist the retail industry in removing products from distribution.

But, although important, this rationale is really a very small part of the justification for this legislation.

The major justification for the legislation lays in the fact that hazards to which children are exposed should be regulated in at least the same expeditious manner as adult products. Under current law they are not. Part of the explanation for this absurd anomaly can be found in history, in examining how Federal product safety laws evolved and in the fact that the regulatory process has not been able to anticipate hazards.

Toy safety under the Federal Hazardous Substances Act predated the U.S. Consumer Product Safety Act, as did the Flammable Fabrics Act. These laws were designed to rely heavily on regulations to address known hazards but not to address them on a case-by-case basis. Congress in its wisdom decided not to tinker with the statutory scheme already in place and decided that products regulated by the HSA, the FFA and the PPPA should continue to be so regulated, unless the CPSC had good reason to bring the hazard under the umbrella of the new law. However, the process of doing so also involves a delay in time—one that has proved to be significant, not through lack of commitment on the part of the Commission, but because the wheels of the regulatory process grind slowly.

In the case of children's products, any delay is totally unjustified. They are vulnerable—they are our future—they deserve our total and absolute protection. And that means swift action to prevent death, maiming and injuries.

In recent experience, products have been introduced into the marketplace that could not be removed quickly under the existing enforcement scheme. They did not violate existing standards. If they had, they could have been removed quickly. They were, however, products that clearly posed substantial hazards—a crib mobile suspended by three elastic strings that strangled two children; headboards on cribs not addressed by the crib standard that had the same disastrous results as the mobile; an apparently innocent and well constructed jungle gym—same result.

The only enforcement tool available to the Commission at the present time is rulemaking—a totally unsatisfactory remedy. Comprehensive, generic standards to address and anticipate hazards produced by ever-changing products, ever-changing product innovations are not achievable overnight and could probably never be adopted legally for due process reasons. Where rules have been adopted, they have taken years to be enacted Let us not forget the bicycle standard. Moreover, to support the rules there has to be testing standards which manufacturers can reproduce during the production cycle, portions of which are often arbitrary and therefore subject to legal challenge.

With the enactment of this bill, the Commission will be given the necessary tool to act swiftly—to act as swiftly as it can now against other products such as hazardous chain saws, paint sprayers, electric coffee pots, electric blankets, et cetera. It will not be limited to rulemaking to achieve its statutory mission of removing hazardous products from the marketplace. The public, particularly, the nation's children, can expect prompt reaction to a hazardous product immediately as the hazard is identified without having to wait for a rule and the painfully slow review process that rule-making entails.

Therefore, on behalf of American TV, on behalf of my constituents in the 18th district and on behalf of Wisconsin consumers, we urge adoption of this legislation. Surely Congress has no choice but swift enactment.

Senator **Kasten**. Thank you, very much.

Our next witness if Ms. Janice Durand, who is president of Puzzlebox in Madison, WI. Janice, thank you very much.

STATEMENT OF JANICE R. DURAND, PRESIDENT, PUZZLEBOX

Ms. **Durand**. My name is Janice Durand. I am president of the Puzzlebox, Inc., a company operating two specialty toy stores, one here in Madison and one in Milwaukee. I am here to testify in favor of S. 2650, the Toy Safety Act.

The Puzzlebox operates in a relative niche in the American toy retail market. We specialize in the sale of toys of high quality design, manufacture, and materials. Most of our toys come from importers who bring in products from all over the world. Another large segment of our stock comes from small American companies. Part of what we sell at our stores is the assurance that any toy on our shelves is safe. To a large extent we are forced to rely on the integrity and intelligence of our suppliers.

For instance, there is no way short of eating it and waiting for the results to know if a paint is nontoxic. Also, the best of our manufacturers and importers practice voluntary recall as it is in their best interest to get an unsafe toy off the shelves.

To a larger extent, however, we find it necessary to rely on our own criteria for determining if a toy is safe. We have pulled eyes out of stuffed animals, broken wooden rattles in half, stepped on plastic rattles to determinme the strength of the plastic, and considered the size and small mobility of plastic pellets in a so-called beanbag before rejecting it and sending it back to the company, but sending a bad toy to the company is as far as we can go.

What we do not have at present is a system of notification so that we can get an unsafe toy off the shelves quickly. It is my understanding that this bill would create such a system. The law will provide the Product Safety Commission as the ultimate screener. Our store could send what we consider an unsafe toy to the Commission who, upon satisfying itself that the toy is indeed unsafe, would be empowered to recall it.

I would also like to speak to a related matter; that is, age guidelines on packaging. There is simply no protection for a child when an adult buys a toy that is unsafe because it is unsuitable for the child's age. Our salespeople routinely and frequently suggest alternative selections to customers who have chosen an unappropriate toy. For instance, something with small sharp parts for an infant, a windup toy that is perfect for a 6 year old, could be a disaster for a small child still at the stage where everything is jammed in the mouth. Not everything in the store, however, can provide this service, and the weary aunt or uncle buying a gift for a young relative may inadvertently give the child an unsafe toy.

Many responsible manufacturers are now labeling, and the clearest label reads, "Not suitable for children under three." There are probably a lot of ways to do this, but I think I would like just to step outside my written testimony at this time to say that the more detail you can go into specifying the age guidelines for a child, the better off you are. However, I think that clarity is really important, and that is something to be said for formula, not suitable for children under three.

I think universal labeling will prevent needless accidents and give the consumer confidence and assurance that he is buying the child, not only a fun toy, but a safe one. Thank you.

Senator **Kasten**. Janice, thank you very much. We had a series of hearings on this subject here in Madison and also Milwuakee WI, and earlier in Washington DC. Both you and Kay have mentioned this whole age question. Although age labeling isn't a part of this bill, I think it's clearly something that people are concerned about. I am quite interested, myself.

Ms. **DURAND**. It's something that comes up every day in our store.

Senator **KASTEN**. Your question of wording is the same kind of question we are now dealing with in putting health warnings on cigarettes—questions as to how that should be done, which way, shape and form etc. I thank you for your testimony.

Our next witness on this panel is Ranee Goodroad, the director of Satellite Child Care. Ranee, thank you for joining us.

STATEMENT OF RANEE M. GOODROAD, DIRECTOR, SATELLITE CHILD CARE, INC.

Ms. **GOODROAD**. The perspective of this testimony is from that of child care, and more specifically, family day care which is child care in the home of an individual provider.

The department of health, social services, division of health, estimates that there are currently 47,567 children served by licensed day care alone in the State of Wisconsin. It is estimated that there is a total of 100,000 children in some type of child care arrangement in this state. It is also estimated that there are between 1,000 and 3,000 individuals doing child care who do not need to be regulated because they care for 3 or fewer children. In Dane County alone there are approximately 80 State licensed homes, 200 registered homes, and in Madison there are 65 city certified homes.

Agencies which regulate child care are: State licensing, county certification, and Dane Couinty registration, and in Madison, city certification. With the exception of city certification, the regulatory agencies visit each home either annually or on a spot-check basis. Even in the family day care system where we visit each home every 6 to 8 weeks, it is very difficult for us to go through each individual toy, since there are several things observed and done in the course of each visit. It is virtually impossible to inspect each toy and article intended for use by children. Even if this were feasible, it would be entirelv possible to overlook a hazardous item. Agencies such as these regulatory ones need to rely on other agencies to provide the particular type of service. In addition, there are a number of providers who are unregulated and who do not come in contact with any regulatory agencies. In all of the rules which are established for child care, the base line is the safety of each child. Beyond that we work toward maximizing each child's physical, cognitive, emotional and social development.

In summary, I would like to make the following points: One, family day care providers are self-employed business people who provide a service in their own homes. It is vital that the tools of their trade be as safe as possible to reduce the possibility of injury to a child in their care.

Two, there is a need for a national list of one or two contact agencies in each state which can be contacted regarding product safety. These agencies, such as 4-C in Dane County and 4-C in Milwaukee, could then disseminate the information through channels such as newsletters.

Three, given the amount of time and cost continually being invested in making and enforcing child care regulations to ensure safety, it would only follow that unsafe toys and articles be removed from the market as quickly as possible.

On behalf of the child care communities, I would like to thank you for introducing this bill for Congress.

Senator KASTEN. Thank you, Ranee, for your testimony here today.

Our next witness is Dr. Bruce Edmonson, Department of Pediatrics at the University of Wisconsin Hospital here in Madison.

We are particularly happy to have you working with all of us. Please go forward in your testimony, Dr. Bruce Edmonson.

STATEMENT OF DR. M. BRUCE EDMONSON, DEPARTMENT OF PEDIATRICS, UNIVERSITY OF WISCONSIN HOSPITAL

Dr. EDMONSON. Thank you.

Senator Kasten, I wanted to take the opportunity today to primarily ask a question of you and to see if we can discover whether the legislative and regulatory laws at this point are adequate to meet a whole host of needs in the area of child injury.

Let me say at the outset that I certainly support the bill, but I want to take the opportunity to ask whether the legislative environment and the regulatory environment is such that there aren't a lot of loopholes as there were in this area in general of child safety, and let me give a little bit of history and then ask whether you think we are doing as well as we can in these particular areas.

The history that I want to bring up is the Poison Prevention Packaging Act of 1970, which is, as I understand it, administered by the Consumer Product Safety Commission and has a number of regulations that have been enacted since that bill was passed in 1970.

It is abundantly clear from research that has been done in the mid-seventies to late seventies that this Act has been very effective in preventing ingestions and very effective in preventing serious injuries, and in particular, I will just give a couple examples.

One in particular is the dramatic decline in death and injury from aspirin use. You probably are aware that through the efforts of both industry and Government there was a dramatic decrease in the incidence of aspirin ingestions for two reasons:

Primarily, the number of baby aspirin pills that were allowed in a bottle was decreased so if ingestion occurred, it was less likely to be serious.

Second, probably most importantly, childproof caps were used. And good data shows that that legislation has been very effective.

Another area that was impacted by that law was also the effect of lye ingestion and particularly drain cleaners such as Drano and Liquid Plumber.

I am convinced from reading the research and the followup of this Act that it was extremely effective in decreasing incidence of use of these poisons.

Now, what I want to bring up today or take the opportunity to do is ask you whether we are doing a very good job in some related areas.

For example, I mentioned that baby aspirin ingestions have been dramatically decreased, and yet it is possible for any of us to walk into our neighborhood drugstore and buy a large bottle of adult aspirin without any kind of childproof cap on it.

As a matter of fact, I did this accidentally the other day and noticed a very tiny, little label on the corner of the box and didn't even realize what I purchased until I got home.

The law, as I understand it, allows an exception there, and I don't know why. I understand that some elderly folks have trouble operating these caps, but I wonder if there would be a mechanism whereby pharmacists could apply a certain kind of cap if it is specifically requested by a patient rather than allowing very large volumes of this product on the market.

While there is tremendous success of that act initially, I wonder if it has been followed up properly.

Another one is some work that I have done here in Wisconsin and that has been regarding drain cleaners. Drano ingestions are very rare these days, again because of adequate packaging and adequate reduction of strength of the product, but what we found in Wisconsin is that there is an ongoing and not decreasing incidence of lye ingestion in dairy farms, and they are using products that would never have been permitted on shelves and are not permitted on the shelf of any grocery store or hardware store. And because it is non-regulated, then it escapes any regulation by the Government.

So, these products which were literally banned as of the early seventies are widely available now on any dairy farm in the State. Those products are used twice a day, and I have an article with me to be published shortly, documenting the extent of injury from this very dangerous product.

Another point that I want to bring up is about the reversible cap. The cap is widely used in drugstores where the cap can be flipped over, and therefore, made nonchildproof. It is quite popular, again I suspect for some elderly folks.

We continue to see ingestions due to that particular package because people simply flip the cap over, and at least in several situations that I have been aware of, the adult uses the drug and had no particular reason to bypass the childproof cap other than for simple convenience. Again, I wonder if the regulation of these caps is adequate.

One final thing I want to mention as another example, as, I guess what I see as a loophole, is the question about pacifiers. I think you are aware from the example there of toys that are hung by strings, that strings can be easily wrapped around the neck and the child can be hung.

It has been recognized by pediatricians for years—in fact, there are articles in the pediatric literature showing that children have been strangled by pacifiers that have been hung around the neck of a child with a string. That practice continues to be practiced, and a number of the pacifiers that are in the market have a design which allows very easy attachment of strings.

One of the most popular ones have two little holes on the side. It looks kind of interesting. I don't know if that is a breathing hole or what. I suspect it is designed for attachment of the string, so those are just some examples that I wanted to give.

I guess I am wondering whether the legislation and the regulatory environment has an adequate mandate or adequate authority to address all these various issues or are we dealing here with piecemeal legislation? Are we chasing after each risk as it occurs or does the Consumer Product Safety Commission have authority to deal with all the issues that I raised?

Senator KASTEN. Let me first of all say this hearing was intended to cover the scope of the Toy Safety Act and not this broader range of topics, but I very much appreciate your bringing up some of these questions. As you see, there is a court reporter present. This is an official hearing of the Senate Commerce Committee and the minutes of this meeting will be published. Your suggestions will be among those that will appear in the official hearing record.

Let me just, if I can, respond because I have been on both sides of the safety cap issue, as chairman of the Consumer Committee. Frankly, there have been at least as many people representing elderly groups who have been complaining particularly about that one cap where you had to matchup the notches. You turn it around in order to get the first arrow pointing right at the second arrow and then you have to snap off the top. A number of people complained about that. They didn't understand it. In fact many people were just taking the cap off once and then letting the aspirin sit without any cap at all. Of course, that is worse than anything.

With regard to the cap that can be changed to be either childproof or not, the manufacturer, I believe, is in Chattanooga, TN. There is a Consumer Product Safety Commission study going on right now with respect to that, and there are a number of different ways we might go. We might leave the cap to go either way, which would mean that you, as a grandparent, could leave it turned your way during the week and then switch it when your grandchildren come home for the weekend. Another option would allow you to tell your pharmacist whether you want to childproof the cap or not. You then destroy the other side of the cap allowing it to work only one way.

Those are the alternatives that are being discussed and considered. The Consumer Product Safety Commission is in the process of a full investigation into this. For one thing, we have got problems with packaging for the pharmacist. Obviously, if he has got all these different sizes of bottles; he has to have all of these different sizes of caps. Going a step further, he would next have to stock all different sizes of both childproof and non-childproof caps. We are trying to work out ways we can provide the option and yet still be able to keep people in the program. With regard to the aspirin example that you used, the law says that each manufacturer can make one size without a childproof cap. That is what the law says. The manufacturers pick their size.

Now, you can look at that as a loophole from the viewpoint of an expert or pediatrician who is concerned about child safety. However, there are other people who would testify on a different day saying they would like more options because everybody is making only the larger size, in order to use the non-child-proof cap. That is something we ought to consider and look at.

I think in general with response to your overall question, the law is something that is evolving. What we found really is a change, not in the law, but a change in the recall process. Because of accidents and deaths, and some of the things we showed you here today, we discovered that it was easier to recall a defective toaster than it was to recall a defective crib. What we decided to do is remedy that problem so that the recall process can be expedited.

We are having these hearings in order to develop a stronger public awareness of the issue and also, frankly, because I want to enact legislation this summer before next Christmas. I want to have this whole process in place for the regulatory bodies before we get into the Christmas selling season. That means we need to have the Senate and the House of Representatives pass the bill in early August, giving the President time to sign the bill and leaving September and October for the Consumer Product Safety Commission to work with representatives of the various toy industries, some of whom are represented here today. If we can hold to that schedule, we'll have the recall process in place by the upcoming Christmas season.

I appreciate the points you have raised and particularly on one or two of them, we will be continuing to work with you and others. We are all interested in the same goal, but as I say, on this child-proof cap business, it is one that cuts all sorts of different ways, depending on which groups you are talking to.

Let me say once again say to all of you, thank you for your testimony. There are some questions that we may submit to you and ask that you get back to us in writing. It is a hot day and a warm room and we have got two other panels to follow, so I think rather than go through lots of questions right now, we will dismiss panel No. 1 and thank them once again.

The next panel is Dr. Nichol, Ms. Wickstrom and Dr. Ackerman.

Our first witness is Dr. Kathryn P. Nichol from the Dean Medical Center, Madison, WI. Dr. Nichol.

STATEMENT OF DR. KATHRYN P. NICHOL, DEAN MEDICAL CENTER, MADISON, WI

Dr. NICHOL. Thank you. It is nice to be here. I am here primarily, I think, as the representative for the Wisconsin chapter of the academy and have done so for a number of years. When I was contacted by your Washington Office, I said it was a wonderful idea to have the Toy Safety Act and get it passed, but my primary interest and my primary thrust has been in car seat, not accident, and I am sure that you are aware that that in fact is the biggest killer of children—far, far exceeds it than toys ever do to our youngsters. So then I was asked if I would just briefly present what has been happening in Wisconsin because we have a lot to be proud of, but we have a long way to go.

Primarily I have been involved in instituting the infant car seat programs in Madison and around the State, educational loaner programs which occur—many of them occurred before the passage of the State legislation, the car seat legislation, and I think the reason I am sitting here is because there are a few slides that can depict better than I can where we are. That is a map of Wisconsin, and each dot on that map represents a hospital which has deliveries. We have about 73,000 deliveries a year in the State of Wisconsin.

The next slide shows where we were last year and about this time of the year in June following the survey. Each red dot represents a hospital that has an infant car seat program in place so that mothers that are delivering babies at a hospital can go home from the hospital and put their child in an infant car seat. All these programs are hospital-based educational loaner programs. That means that about 73 percent of women delivering in the State of Wisconsin last year had an opportunity to get involved in those programs and about 37 percent who have been offered that program have already participated. We have had over 21,000 parents of youngsters statewide last year who had taken advantage of such a program.

This slide shows the blue dots are programs that last year were planning instituting such a program, and the yellow dots indicate communities that had in their hospitals some program available. Sometimes they were selling the car seats or they did not have an educational component, but they were offering their patients something. As you can see, there are only three white dots with nothing.

So, we have done a marvelous job on accomplishing something for our infants. Unfortunately, the data shows that infant car seat usage dramatically, or car seat usage dramatically drops after the infant stage due to a survey in Wisconsin and Madison and basically we saw the same thing. Before we started our infant car seat program, 28 percent of youngsters were in car seats or infants were. That rose to 63 percent after we started our program. However, we did nothing to car seat usage in toddlers, et cetera, which was a stimulus for starting a car seat program in Dane County. At the time it was the only fee for service claim in the country for doing such a thing. Now, as everybody else has started an HMO, we can no longer take a risk for the service claim. We have also gone to a countywide program. We have used the same format for becoming an educational loaner program and it was started in June of 1982. Two years down the pike we have loaned over 1,100 toddler car seats. The exciting thing about this is that Ernie Hooney, a real advocate for children, and myself have been working statewide. Basically this shows where Dane County was last year. We have been able to start programs around the State, toddler programs around the State. These are programs that will accommodate children in car seats up to age 4 so that we are making it possible for parents to comply with the State law, at least in these counties, on a fairly economical basis.

As you can see, we have a very long way to go before we really complete this process, and I would certainly think that there is going to be a lot of deaths still occurring in cars because of a lack of car seats and because of a lack of their being used correctly.

The other program I just wanted to briefly mention was a program that we have just instituted as of May which was aimed at teenage drivers who are drinking, and it is called an All-Safe Program. Basically it has been running for 9 weekends, and we have had about 45 riders with better than 95—I am sorry, 40-some calls where there have been 95 riders and we have seemed to have struck the population that we wanted to, which is the younger person who is the passenger, the young teenager, young passengers with the inebriated driver who needs a ride home. We see this, again, as a new program, as a potential model to be used around the State. If you look at that, there looks like in 1982 there was something like 11,000 car accidents which probably involved teenagers who were inebriated. So, this is a really big number of deaths and a really big problem. I would like to congratulate your efforts for toy safety, but I would like you not to forget our children in cars.

Senator KASTEN. Dr. Nichol, thank you very much.

Our next witness is Jane Wikstrom, who is the director of consumer and public relations for Target Stores, from Minneapolis, MN. First of all, we thank you for traveling to Madison, WI, and we look forward to your testimony.

STATEMENT OF JANE A. WIKSTROM, DIRECTOR OF CONSUMER AND PUBLIC RELATIONS, TARGET STORES

Ms. WIKSTROM. Thank you very much.

It is a real pleasure to be asked to come and testify before you, Senator Kasten.

Let me just preface my comments by saying that I am not here to make Target nor Senator Kasten nor the CPSC look either good or bad, but rather to just present the facts in the interest of product safety and, more specifically, toy safety in the marketplace.

My name is Jane Wikstrom. I am director of consumer and public relations for Target Stores and I have responsibility for the companywide operation for customer research, consumer service and Target's quality control, product safety and public relations.

Target is a $3.5 billion company and we serve over 100 million customers every single year. For those of you from Madison, you may not recognize Target unless you travel to Milwaukee or one of our other communities, you may recognize us as a division of the Dayton-Hudson Corp., who is best known for its representation for being a community- and consumer-minded corporation. I think Target, as the largest operating division of the Dayton-Hudson Corp., has learned this philosophy very well. We are very pro-safety. We are pro-consumer and we are certainly pro-Consumer Product Safety Commission. We have always thought that those three audiences were synonymous with one another and have supported that, both internally with the management of Target and the Dayton-Hudson Corp., as well as externally. And, we have been fortunate enough to be applauded by the Consumer Product Safety Commission for our efforts.

Target's toy safety program began in 1974, since that time and over the last 10 years, we have tested over 40,000 different toys. In addition to that, we tested another 150,000 toys, which I am going to talk more about in just a few minutes. Of those 40,000 toys we tested, we experienced about a 5-percent failure rate of all those toys, and when a toy failed for something like sharp edges, sharp points, or small objects, we followed the prescribed procedure of the

CPSC and reported the findings to the CPSC, filing the 15-B report.

Why I am here today is really to demonstrate our support for the CPSC, to specifically demonstrate our support for 2650, and I think most specifically and perhaps most importantly, to share our concerns about the current operation of the CPSC, which I think will bring to light the importance of the need for this new bill.

I mentioned the 32 toys that had failed in our testing program over the last 2 years; failed to meet Federal requirements for safety by the CPSC's own definition. In not 1 of those 32 cases have we ever had a national recall, nor have we ever heard back from the CPSC on the current position of those 32 failed toys. In addition, and I think it certainly correlates with that, is that what we have here is a company who is willing to take private initiatives on toy safety. But those initiatives are limited to the retailer doing the testing when in fact those benefits could be realized nationally. I think, too, from Target's standpoint when that happens, when we end up identifying problems, recalling a toy, and K-Mart next door or another retailer down the street from us does not recall it because they don't have the same program or because the CPSC doesn't take action, we are at an economic and competitive disadvantage.

In the past, as I indicated earlier, we had really supported the CPSC and we continue to support them internally. However, I must say it is becoming increasingly more difficult to defend the CPSC when the quality control department is taking firm action internally with management, buyers, and externally with our vendors saying we must comply with the CPSC and then have nothing happen for years at a time. It's also frustrating along those same lines for us to follow the prescribed procedures of reporting within 24 hours, identifying the defect, making sure that we file the letter, notifying the manufacturer and the CPSC and then to have nothing happen. Personally that is very frustrating.

Here's a good example that will really bring this to light. In late 1981 we identified a stuffed animal that had a small parts hazard. The eyes came off. We reported it to the CPSC and to the manufacturer and we were, of course, anxious to move on this because this was a toy that was planned for the following Easter season. We had a million dollars worth of the inventory that we were sitting on. We were between a rock and a hard place because the manufacturer was saying "we don't support your findings." On the other hand, we knew enough about toy safety to know it wasn't in compliance and we didn't feel comfortable selling it. So, we told the CPSC that we would inspect each of those 150,000 toys. Each eye and nose on every single toy was tested. We found a 7.5-percent failure rate. Six months later, well past the Easter season, we did get a report back from the CPSC which supported our own findings saying that they had also identified a 7.8-percent failure rate, but they took no position on it; there was never a recall. And, quite honestly, our feeling was at that time when we most needed a partner in the CPSC, we didn't get it.

I think that there is dissension at the public level as well because I think even though many consumers, many taxpayers, if they were to be surveyed, would be not so much progovernment interaction, I do think they believe that somebody is out there protecting them and looking after their best interests as it relates to safety of products. And, certainly a commission with a name Consumer Product Safety Commission better be looking after consumer product safety or I, as Jane Wikstrom, taxpayer, want to know what my money is going for.

I think the dissension is occurring at the corporate level for things I mentioned earlier like when Target complies with the standards prescribed by the CPSC, but the CPSC doesn't follow up. Put yourself in the position of our president, Senator Kasten. If you were the president of Target Stores, at some point in time you say, "should we really be spending these thousands of dollars every single year to test toys and recall them when nothing is happening with the information and the retailer down the street is not doing anything about it either?"

In summary, I would like to say that I do think the CPSC is a very needed organization. I don't think that most companies are going to comply with voluntary standards. I think we need the Government interaction as it relates to product safety. I think the CPSC has to stop riding the fence on toy safety. I think they need to improve their credibility, both with corporations and certainly with the public at large. Finally, I would say that 2650 should be written, not only to allow the CPSC to take faster action on toy recalls, but in fact should require it. Thank you.

Senator **KASTEN**. Thank you very much. One of the problems we go back and forth on and one of the areas that we talked about earlier and have addressed in a broader concept than just toys is this whole issue of what some manufacturers would call trial by press release. This occurs when an announcement is made that something is unsafe or may be unsafe when in fact the testing procedures may have been faulty or whatever. Meanwhile, the press release is going back and forth effecting what happens in the marketplace. The Consumer Product Safety Commission has always struggled to get a balance between the media and the kinds of recalls that you are talking about. In fact, they have been quite fair and haven't gone out with a statement if there isn't a strong purpose for it.

I appreciate your comments. Most of what you said goes beyond our Toy Safety Act that we are working on right here, but there are some ideas that we can pursue.

[The statement follows:]

STATEMENT OF JANE A. WIKSTROM, DIRECTOR, CONSUMER AND PUBLIC RELATIONS, TARGET STORES

By way of background, Target Stores is: An upscale discount department store; a division of the Dayton Hudson Corporation; has annual sales of approximately $3.5 billion; operates 214 stores in 22 states; serves about 100 million customers a year; Target's merchandise mix consists of two-thirds convenience oriented hardlines and one-third mid range fashion family wearing apparel and shoes; Target's basic operating philosophy is to offer customers quality merchandise at low prices in a clean, easy to shop environment. Everything sold by Target is backed by an unconditional return policy.

Target and Toy Safety: In 1974 Target embarked upon a Toy Safety Program that entailed extensive testing on all toys prior to their delivery to Target Stores. While changes and improvements have been made to the program over the years, it has basically remained intact.

Here's how our Toy Safety program works: When Target decides to purchase a particular toy our buyer instructs the manufacturer to send two samples to an independent testing lab under contract with Target. The toys are subjected to appropriate tests to assure compliance with both Federal Regulations and Voluntary Standards (PS 7276).

If a toy fails (depending on the nature of the defect) we may elect to test 12 additional samples. The results of those tests help us determine our course of action.

Keep in mind all of this testing is to be conducted before we buy a toy or offer it for sale in our stores. That obviously makes the most sense. In 1983 we tested 4,430 toys. 4% (186) of those failed and were eliminated from our assortment.

However, as you might suspect the procedure isn't perfect. Sometimes we discover an untested toy has been shipped by a vendor. Or, on occasion we will discover through a customer or through our retest program that a toy in our assortment has a problem. In those cases—when we have sold toys that turn out to have a defect—we follow the CPSC procedures for reporting defective toys. And, most importantly we immediately recall the toys from our stores and warehouses and cancel all future orders.

In the past two years 32 toys have fallen into that category . . . they failed to meet regulations, they were reported to the CPSC and they were voluntarily recalled from our stores immediately.

Now the kicker! To our knowledge, in not one of the 32 cases has any action taken place. The most follow-up we received was a letter from the CPSC saying "Thanks—we'll pursue it."

My concerns and thus my reason for supporting the amendment to FHSA are these:

1. With the extensive amount of testing we do (about 5,000 toys a year) from varying resources, we have yet to see one of our "defective" toys recalled nationally. So, the benefit of our testing program is limited to Target's customers when it could be spread nationally.

2. When Target is the only one to take action (recall) we are, in effect, put at an economic and competitive disadvantage.

3. Quite frankly while I think we are doing the right thing ethically by testing toys for safety, it is becoming increasingly more difficult to defend this very costly program internally when no action is taken by the CPSC externally. Management could conclude that the defects are not significant enough to be considered hazards by the CPSC (because management may not really understand that the CPSC is the one that sets these standards in the first place), and thus question the credibility and viability of our program.

4. One of our biggest concerns is it is just plain frustrating to work as hard as we have to be in compliance (testing, follow up with vendors, notifying the CPSC within 24 hours, recalling, etc.) and then have years pass before anything happens with this information.

Let me share an example that will help bring this concern to light.

In late 1981 we tested several styles of a stuffed animal and discovered problems; a small object hazard was identified with the eyes and noses.

We reported our findings to the manufacturer and the CPSC. The manufacturer did not agree with our findings and refused to take back the toys they had shipped. So, we were sitting on $1 million worth of inventory.

As the toy was planned to be a big Easter seller, we didn't have much time to sit idle. We notified the CPSC that we would check the eyes and nose on every toy and only those that passed the tests would be sold. The manufacturer reluctantly agreed—of course all the testing and all the other expense would be borne by Target.

We proceeded to consolidate 150,000 stuffed animals from 147 stores. We flew in inspectors, trained testers and developed a reporting procedure. It took 23 days and literally thousands of dollars to complete the inspection process. After the 1st 50,000 toys we had a failure rate of 7.8%.

The CPSC sent a report six months later of their findings; they had a 7.5% failure rate on 132 samples. Our repeated calls to the CPSC to find out their position regarding their findings left us with no information. We felt we had no support from the CPSC. And there was never a recall on the product other than Target's own. In effect, we looked foolish. We spent thousands of dollars and a lot of time—to what avail?

While it's true we prevented potential problems with our own customers, customers of other retailers did not receive the amount of protection they could have/should have from the CPSC. Who would have been liable if there had been an injury?

My honest feeling about that whole incident—having followed the prescribed procedures to the letter—is what does it take for the CPSC to take a position? Even a position contrary to our own would have been welcome. I suppose if there had been a death some action might have ensued. But I thought the CPSC was preventing serious problems, not reacting to them.

5. And finally, I think the biggest concern of all is perhaps the deception that is occurring. The public may not be pro government interaction in general, but when it comes to safety the public firmly believes someone is looking after their best interests. And, a Federal government Commission with a name like the Consumer Product Safety Commission better be looking after the safety of consumer products. Otherwise, I (as Joe consumer) want to know what my tax dollars are bring spent for at the CPSC.

Not only is there deception at the public level, but perhaps at the corporate level as well.

If the CPSC isn't complying with their own standards of safety for toys, then we as a company have to ask ourselves why does the regulation exist?

If Target ends up pulling a toy from the shelves because it doesn't meet Federal regulations and then the CPSC fails to recognize the non-complying toy as a hazard (by their own definition) where does that leave Target?

Ironically, rather than helping our customers we are hurting them because the costs of testing and recalling are passed along to the Target customer in the form of higher prices.

I ask you, if you were the President of Target would that make sense to you?

In summary, I think the CPSC is a needed organization. I don't think all companies are as good at self audits regarding safety as Target is. I think the Federal Standards for toy safety are good. I also think some of the Voluntary Standards should become Federal requirements. But the CPSC has got to have the clout and the resources to take action—quickly.

If the Toy Safety Act of 1984 is a means to that end, then I say it's too bad it wasn't proposed earlier. In the interest of the credibility of the CPSC, and in the public interest I say let's move now

Senator **KASTEN**. Our next witness on this panel is Dr. Norleen Ackerman, who is the former assistant professor of the School of Family Resources and Consumer Sciences from University of Wisconsin, Madison.

STATEMENT OF DR. NORLEEN M. ACKERMAN, FORMER ASSISTANT PROFESSOR, SCHOOL OF FAMILY RESOURCES AND CONSUMER SCIENCES

Dr. **ACKERMAN**. Thank you. It is very nice to be here today. I have been teaching a consumer legislation course to both our consumer science majors and to other students who are interested in that topic for the past 7 years in the University of Wisconsin, School of Family Resources and Consumer Sciences. We have, in that course, studied the Consumer Product Safety Commission. We have talked about consumer product safety in general and product recalls, and so it is interesting to be here with the others on this panel.

As we look at the laws in the product safety area, toy safety was one of the earlier issues addressed by Congress in 1966 and 1969, so toy safety laws were around before the Consumer Product Safety Commission. As Kay Ryan has already mentioned, there are a number of laws that have addressed product safety. These were specific acts on very limited issues at different points in time. We developed a patchwork of laws that cover individual topics with different definitions of safety and different recall provisions. That's how the "legislative quirk", or "historical accident" happened; so the toy procedure for recalls was slower than was the procedure for adult products. It's one of those things that does happen and needs to be addressed. I am happy to see that this problem has been identified and that S. 2650 is being proposed to speed the recall process for toys and to make the standards the same as they are for adult products. Patchwork legislation has been a problem in many laws over the years.

So I'm here to support The Toy Safety Act of 1984—S. 2650—or greater protection of children for two reasons. First, it speeds the recall process and, therefore, will protect children more than the old standard has. Second, one of the things that I found in teaching is that a patchwork of laws makes it so much more confusing to teach, for students to learn, and for the law to be enforced. So to move from different standards—and in this case from children being less protected than adults—to a simple uniform procedure for both adults and children will be more understandable for those of us who are educators to teach, easier to enforce, and more readily understood by retailers and other groups who are concerned by the matter. So, I favor the move to a better standard and also a more uniform standard.

I'd like to pick up on something else: the whole area of recalls. The average success rate of recalls—that is, the percentage of the recalled items that were manufactured and sold—that have actually been replaced or repaired—usually is about 50 percent. The success rate of recalls varies all the way down to less than five percent and up to more than above 75 percent. If there are current actions going on at the CPSC to improve the success rate of recall procedures, I am not aware of them.

This law improves the procedure for recalls, but it doesn't ensure that more unsafe products come back. So I question, are there some ways that we can make that recall procedure work better than it does now?

The last thing I have on my list here is that I would like to comment on something Dr. Edmonson said. He inadvertently picked up a package of aspirin which didn't have a safety cap on it. Now, there are people who have trouble opening these safety cap bottles. In fact, I took some of those safety caps to class to have college students try to open them. Some students say it's easy, but they are opening the reversible caps put on the easy way. The problem with the over-the-counter products is that many of us don't stop to think about safety caps, at least not until we get home and take the cap off the bottle. If there were a way for those packages to clearly alert the shopper as they are buying that this is the size that doesn't have the safety cap, it would be helpful. We don't remember to look for safety caps when we are shopping; it's after we get home that we are aware of it. So, it would be worthwhile to find a way to remind shoppers of safety closures through clearly visible package statements, because we often forget, when we are shopping, that we need to make a conscious choice between safety and nonsafety packaging.

Senator KASTEN. That's interesting. Thank you. We are not going to have time for questions because of the time constraints we are under, but your comments were interesting. We have been talking about whether or not the Consumer Product Safety Commission and other agencies are putting too many resources into problems and not enough into rulemaking. They are not working the rulemaking as well as they—I should say as often as they have in the past, and it's a question as to whether there is more rulemaking and not as many recalls. That's something we might come back to you on in terms of suggestions for questions and comments and written testimony.

Dr. **Ackerman**. It's often a shock to college students that the major way recall information will reach them, if it's not a car, is going to be a public service announcement or some other mass media publicity—if the broadcaster or paper or magazine chooses to print it. So, it's easy to miss the recall notice even if you have the product.

Senator **Kasten**. Let me thank you, each of you, for joining us. I am particularly pleased to learn a little bit more about safety seats. That, of course, is getting to us in Washington. I would like to thank all of the members of this panel and ask now that Mrs. Margaret Ziarnik and Mrs. Jane Jansen come forward.

Mrs. Ziarnik is the first witness from the Division of Health, Department of Health and Human Services, Madison, WI.

STATEMENT OF MARGARET E. ZIARNIK, DEPUTY, SECTION OF ENVIRONMENTAL AND CHRONIC DISEASE EPIDEMIOLOGY, DIVISION OF HEALTH, DEPARTMENT OF HEALTH AND HUMAN SERVICES

Ms. **Ziarnik**. My name is Meg Ziarnik. I'm here for informational purposes only for the division of health. The purpose of this testimony is to demonstrate that injury prevention is an overlooked priority area for public health programming nationally and to offer alternatives that are being held within Wisconsin, specifically in child injury control.

Imagine a disease category that accounts for the greatest cause of both morbidity and mortality in persons between the ages of 1 and 45. It is the largest single reason for physicial visits and results in a societal cost estimated at more than $83 billion per year. Cancer? Heart disease? No, surprisingly, the category is injuries. Unfortunately, along with widespread underestimation and misunderstandings of the impact of injuries in our health and economy, there has been a low priority assigned to Governmental and private initiatives designed to clarify and eliminate the circumstances of injury.

Injuries are defined as those damages resulting from acute exposure to physical and chemical agents. Common causes include vehicle crashes, falls, burns, poisons and drownings. The measurable repercussions of injuries on death, disability and health care expenditures is enormous. In Wisconsin injuries account for about 2,000 deaths per year and amount to 5 percent of all the deaths in the State. About 50 percent of all unintentional injury deaths are not associated with motor vehicles. Injuries are the leading cause of death in the first four decades of life.

Death data represents only the very tip of the iceberg for injury statistics. For example, studies have shown that for every death due to injuries among children under 19 years, there are 44 hospitalizations and 748 visits to the emergency room. About 80 percent of all nonfatal injuries are not associated with motor vehicles.

Specifically relating to morbidity and mortality related to children is even more staggering. During childhood, injuries account for more deaths than the next nine leading causes of death combined.

Senator KASTEN. You say the next nine?

Ms. ZIARNIK. Yes.

Senator KASTEN. That is an interesting statistic.

Ms. ZIARNIK. Childhood accidents do not just happen. They are caused by the interaction of susceptible children with a hazardous environment. The inevitability of the resulting adverse event can be altered by prevention of the accident circumstances, protection of the individual and the reduction of the adverse consequences of the casualty.

The Childhood Injury Control Program within the Wisconsin division of health addresses those three commnents of injury presented previously. The division of health is developing a community-based Home Hazard Reduction Program and will also be expanding our existing Child Passenger Safety Program which Dr. Nichol was taking about before.

The community based Home Hazard Reduction Program affects high risk areas in project communities which will be chosen and then inspections of homes will be made. The hazards are then reported and corrective measures are applied through parental education and maybe even installation of the safety devices and correction, if appropriate, in building codes.

The Child Passenger Safety Program has been with the division of health for the last 2 years. We are under contract with the Department of Transportation. Wisconsin has a law mandating car seats or restraints to be utilized for children to the year of 4. We have an Infant Car Seat Program in every city with the maternity service. In the last 2 years we have also implemented 20 new Toddler Car Seat Programs.

Our initiative over the next 2 years will be to increase the Toddler Car Seat Program to include every county, thus establishing a statewide network of Toddler Car Seat Rental Programs.

While these are only two types of examples of programs that would be developed between the broad based injury program, I would also like to inform you that request for proposals for the 1985 internal child health block and the prevention block went out to potential recipients on Friday. In it it has identified as a priority injury prevention so we are expecting a number of grants coming back from that. I have for your perusal the Developing Child Interprevention Programs which came out of the center for disease control and also one of my staff has developed an injury paper which is called Riding the Third Wave of Public Health.

Senator KASTEN. Meg, we thank you very much for your testimony.

Next is Jane Jansen who is an assistant administrator of the Division of Trade and Consumer Protection at the Department of Agriculture. My notes, Jane, say that you are to be accompanied by Julia Dolphin. However, I see you decided to testify by yourself. Please go ahead, Jane.

STATEMENT OF JANE M. JANSEN, ASSISTANT ADMINISTRATOR, TRADE AND CONSUMER PROTECTION DIVISION, WISCONSIN DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION

Ms. JANSEN. The Department of Agriculture, Trade and Consumer Protection is the agency charged by the Wisconsin Legislature with product safety jurisdiction under the following sections of the Wisconsin statutes: Hazardous Substance Act, flammable fabrics, product safety and packaging Standards, and Poison Prevention.

Our statute entitled "Product Safety" section 100.42, covers toys in its definition of consumer product. While the procedures our agency must follow under this law are not nearly as cumbersome as those the consumer product safety commission must follow in order to remove a toy from the market, they are nevertheless time-consuming. However, the drafters of our Wisconsin laws in what may well have been recognition of the problem in the Federal laws that the Toy Safety Act of 1984 is designed to correct, specifically included toys and other articles used by children in the definition of hazardous substances included in our section 100.37. We have further implemented this legislation by adoption of Wisconsin administrative code, section Ag-72.05, in which we have set forth various flaws that by definition make a toy hazardous under section 100.37.

As a result of this farsighted inclusion of toys in our section 100.37, our agency cannot only summarily ban the sale of unsafe toys, a procedure far more cumbersome than it sounds, we can also issue holding orders on substances, including toys, when we have reasonable cause to believe that the substance is in violation of section 100.37 and Ag-72, or that the substance poses an imminent hazard to public health and safety. These holding orders prohibit the sale or movement of the substance in question for up to 14 days. If, during this period, analysis or examination bears out the preliminary findings that the substance is hazardous within the meaning of the law, then the product may be subsequently disposed of only as authorized by our agency. Such a finding is appealable, of course, but the appeal does not stay the holding order.

This statutory authority enables our agency to remove an unsafe toy from the market promptly, thereby greatly reducing the danger of children being hurt. It gives us some breathing room to invoke the various administrative procedures necessary to effect a ban on the sale of the product and, where appropriate, recall a product already sold.

Our department has made good use of this authority in our continuing work for the safety of the people of Wisconsin. We have been assisted and encouraged in our work by the Consumer Product Safety Commission's Chicago regional office. Recently, our contact with CPSC has been further developed through a contract involving follow up of substantial hazards in the State.

As a result, some 50 products have been reviewed in conjunction with events surrounding their use. Approximately 20 percent of these products have been toys or involved injuries to children in their use. What we have normally looked on as a cooperative effort has been enhanced through the formalization of the State-Federal relationship in pursuing our common interests.

While we are quite satisfied with our own authority to deal with unsafe toys, we are only one State. Acting in concert with the CPSC magnifies our effectiveness. If we act against an unsafe toy, and remove it from the marketplace, we must then remain constantly vigilant to make sure the toy does not enter our State through some other channel of distribution.

We do not have the staff resources to perform this constant surveillance. The proper solution to this problem is a Federal solution—to remove the toy from the channels of interstate commerce. The Toy Safety Act of 1984 is consistent with Wisconsin law and would give the consumer product safety commission the enforcement tools it needs to do its job in a timely manner. Therefore, we support it.

Senator **Kasten**. I thank both of you for your testimony. Although it didn't come up, I just wanted to ask each of you if you have any experience with the age labeling issues, and if you do have any experience, if you could just briefly give us a couple of ideas. It's not part of the legislation, but it's brought up almost every time child experts get together. Do either of you from your viewpoints have any comments on the age labeling question?

Ms. **Jansen**. I would say yes, that it is an area that we have constant exposure to in that, of course, every parent thinks their child is advanced and will buy a toy that is perhaps not even within infant age limits.

If we could see some advancement as far as the reason for that label so parents or concerned adults who purchase toys will understand why it is recommended for a certain age group. You really could do a lot of good for the consumers in Wisconsin and across the Nation.

Senator **Kasten**. Meg, do you have any special comments?

Ms. **Ziarnik**. Well, the bureau of community health and prevention doesn't actually get involved in any toy safety. I do believe we would obviously support the age labeling. The one thing that we are involved in, though, of course, is the packaging area, and we would also support any changes in that legislation in actually getting some way of getting some inspection. If nothing else, just grocery stores, drugstores, that would actually have the protective poisons for children on their shelves.

Senator **Kasten**. I thank you. That concludes this panel. I don't believe that there are any other witnesses in the room. On behalf of the subcommittee, I'd like to thank all of our panelists today for their testimony. As I said earlier, we are looking forward to passing this legislation expeditiously, hopefully so that we will be able to have this whole system in place by the Christmas selling season. I thank you again. The meeting is adjourned.

[Whereupon, at 3:47 p.m., the hearing was adjourned.]

[The following information was subsequently received for the record:]

STATEMENT OF GERALD THAIN, PROFESSOR, UNIVERSITY OF WISCONSIN LAW SCHOOL, ON BEHALF OF THE CENTER FOR PUBLIC REPRESENTATION

The Center for Public Representation is a non-profit public interest law firm which provides advocacy for unrepresented and underrepresented groups before legislative, administrative and judicial bodies. The Center has a long history of advocating more extensive protection for consumers harmed by the products they buy, including children harmed by defective or dangerous toys. In this statement, the Center will express its views on toy safety in general and the Toy Safety Act of 1984 in particular.

Under current law, the Consumer Product Safety Commission (CPSC) has the authority to directly recall most products intended for use by adults. Yet, when it attemps to recall toys and other articles intended for use by children, it is faced with choosing between two equally burdensome and time consuming courses of action. The more expeditious of these two options (which still often takes from four to fourteen months) requires the CPSC to transfer its regulatory function from the Federal Hazardous Substances Act to the Consumer Product Safety Act. By the time authority is established, many more children may have been harmed.

The Center supports the Toy Safety Act of 1984. By abolishing the "tranfer" rule, the Act will eliminate many of the unnecessary and unreasonable delays in removing harmful playthings from the market. The changes proposed by the Act make both administrative sense and common sense. There is no reason the Consumer Product Safety Commission should not enjoy at least the same power to directly recall toys and other articles intended for use by children that it currently has to recall items used by adults. This change is long overdue.

There are, however, other aspects of toy safety which may be beyond the scope or intention of S. 2650, but which nonetheless remain in need of attention. For example, harmful toys which could be subject to recall under the Act are defined as those which contain a "defect." The Center would prefer that federal law not require that there be a specific "defect" in a toy to allow for its recall. It seems that a toy could well be harmful or just plain dangerous, and yet not have a particular "defect" that could be as readily articulated and established as the inherent danger in its use. Some state statutes (see, e.g., Wis. Stat. ss. 100.42 (3) and (4)) recognize this distinction by explicitly allowing for the recall of dangerous products. In Wisconsin, this provision has been successfully utilized in the past.

In summary, the Center supports the Toy Safety Act of 1984 and its goal of making the toy recall process less cumbersome. Although other changes in this area may ultimately be worthy of consideration, S. 2650 does provide importrant protections not found in present law.